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Orders payable to EDWARD J. MILLIKEN.

The Solicitors' Journal.

LONDON, JANUARY 9, 1864.

HILARY TERM will commence on the 11th. The arrears in the common law courts are not very numerous. In the court of Queen's Bench the number is sixty-eight, of which there are thirty-six new trial rules for argument, and one for judgment. In the special paper there are three cases for judgment, and twenty-one for argument, besides seven enlarged rules. In the Common Pleas the arrears number forty-four, of which seven are enlarged rules, thirteen rules for new trials, seven matters for the decision of the Court, and twenty-one demurrers entered. In the Exchequer, there are two cases in the Exchequer Chamber for judgment, one rule in the peremptory paper, and in the special paper one for judgment, and eleven for argument; while in the new trial list there are two for decision and seventeen for argument. As there will be no reception of the learned judges by the Lord Chancellor on Monday, the courts will be opened at the usual hour, and the new judge will be escorted to his seat. We believe that the chancery cause paper will be very light, and that there will be barely enough business at Lincoln's Inn to keep the courts going during term.

THE ANALYSIS OF JOINT STOCK COMPANIES, brought out during the year 1863, which appeared in our number of last week, showed that the total amount of capital of new English companies amounted to over one hundred millions—of which, more than ninety per cent. were of limited liability. The following calculation shows that the capital subscribed on the French money-market in 1863 amounted to £62,307,926. This heavy total was made up as follows:—

State loans, £21,800,706; municipal loans, £1,958,740; societies of credit, £15,408,000; French railways, £10,962,160; foreign railways, £7,711,400; and various companies, £4,466,920. The amount actually paid up in 1863 is estimated as follows:—State loans, £21,200,686; municipal loans, £1,741,600; societies of credit, £7,002,000; French railways, £9,162,160; foreign railways, £7,308,200; and various companies, £2,478,920. Thus, of the total of £62,307,926 subscribed last year, £48,893,566 is computed to have been paid up. In 1862 the corresponding total was about £32,000,000 out of £48,000,000 subscribed. Annexed are further details of the amounts estimated to have been paid up in 1863 by French capitalists;—State loans—Internal Turkish Consolidés, £6,000,000; Italian, £2,400,000; Confederate, £600,000; Ottoman, £4,320,000; Tunisian. £1,510,886; Austrian, 1860, £4,000,000; and Russian, 1862, £2,369,860; Municipal loans—Bordeaux, £720,000; Lille, £61,600; Marseilles, £960,000. Societies of Credit—Foncier (new shares), £240,000; Omnium, £40,000; Italian Bank of Credit, £480,000; Italian Mobilier, £480,000; £480,000; Ottoman Bank, £1,350,000; Bank of Deposits and Running Accounts, £600,000; Colonial, £90,000; Spanish Mobilier (old shares, £480,000; ditto (new shares), £1,440,000; Bank of the Low Countries, £336,000; Amsterdam Society of Commerce and Industry, £864,000; Bank of Issue, Hamon & Co., £50,000; L'Approvisionnement, £96,000; Comptoir d'Agriculture, £96,000; Bank of Algeria, £40,000; Lyons Credit, £320,000. French Railways.—Ardennes, £168,000; Orleans (new shares), £2,100,000; Libourne and Bergerac, £80,000; Médoc, £200,000; Charentes, £100,000; Lyons and Sathonay, £34,160; Paris, Lyons, and Mediterranean (new shares), £1,200,000; ditto (old shares), £280,000; obligations of all the companies, £5,000,000. Foreign railways.—Brussels and Lilie, £520,000; Guillaume-Luxembourg (obligations), £287,400; Antwerp and Rotterdam (obligations), £400,000; Saragossa and Barcelona (obligations), £220,000; Medina and Zamora, £92,000; Line of Italy, £100,000; Lerida and Tarragona, £100,000; Roman (obligations), £140,000; Braine and Courtrai, £840,000; Gronollers and San Juan de las Abedesas, £228,000; Netherlands State lines, £100,800; South Italian (obligations), £1,280,000; other obligations, £8,000,000. Various companies—Mulhouse Gas, £80,000; Fraternidad Mines, £28,000; Commercial Assurance, £80,000; Algerian Cotton, £100,000; Moveable Screw, £20,000; Boulevard du Temple, £81,600; the World Insurance, £80,000; Madagascar, £50,000; Paris Rags, £40,000; Lenoir, motors, £80,000; Compagnie Immobiliére, £133,320; Ruhr Collieries, £9,600; Marseilles Gas (obligations), £15,200; Craponne Canal, £32,000; Belgian Immobilier, £640,000; Parisian Gas, £232,000; Tir National, £15,200; Tegernsée Collieries, £80,000; Neapolitan Gas (obligations), £90,000; Ports of Brest, £240,000; Market of the Temple, £72,000; and Marseilles Docks, £280,000. The figures are in some cases necessarily approximative, but they are accurate enough to afford an idea of the increased magnitude and importance acquired, of late years by the French money-market.

MR. COMBE, one of the magistrates attached to the Southwark Police Court, expired on Thursday morning, after a short illness. For about three weeks Mr. Combe had been suffering from a cold, which induced fever, and led to a complete prostration of the system. On Monday last, however, it was announced in the court that he was rapidly improving, and would be able to resume his duties in a short time; but on the following day a relapse took place of so serious a character that all hopes of his recovery were abandoned. The deceased gentleman, who was seventy-five years of age, was called to the Bar at Gray's-inn in 1813. In 1833 he received the appointment of police-magistrate at the Thames Court, was subsequently transferred to Clerkenwell, and in 1851 he was removed, at his own request, to Southwark.

AT THE PRIVY COUNCIL held on the 7th inst., Parliament was ordered to be prorogued from Wednesday, the 13th of January, to Thursday, the 4th of February, when it is to assemble for the despatch of business.

THE SOLICITORS BENEVOLENT ASSOCIATION have just issued their eleventh half-yearly report. The progress of the Association during the six months has been the addition of 160 members—thirty-five as life, and 125 as annual members. The receipts during the half-year have been £1,300 15*s.* 2*d.* The result to the Association of the annual dinner, was a net gain of £700. The directors have distributed £100 amongst eleven necessitous cases, and invested a further sum of £800. The present aggregate number of members enrolled in the Society is 1,360; of whom 495 are life, and 865 annual. The number of life members who contribute annually to the Society, has been increased to 15. The directors now renew their earnest appeal to the profession throughout England and Wales for increased exertions towards the support and extension of this society. We regret to observe that there are still a large number of practitioners from whom the Association has received no aid, and we venture to suggest to those who have prospered in life, that there can hardly be a higher gratification, or a more legitimate means of contributing to their own happiness, than in extending their bounty for the benefit of the widows and orphans of their less fortunate professional brethren. The present is a period of the year when the Association may well hope for considerable help from those who are able to afford it.

TRADE NAMES AND MARKS.

The period for the commencement of a new era in the criminal code, as to fraudulent appropriation of trade marks, is opportune for the reconsideration and firm settlement of the principles upon which courts of equity

interfere by injunction to protect their exclusive use. Our readers are aware that, from and after the 31st day of December last, the new law regulating criminal prosecutions for the wilful forgery and imitation of trade marks, and affixing penalties upon their fraudulent use, came into operation. Thenceforward the remedy of the complainant will be twofold;—he will be enabled to pursue the offender with the penalty of imprisonment and fine, and at the same time to enforce against him his civil remedy. We desire to draw the attention of our readers to the important decisions of the Lord Chancellor, delivered the day before he rose for the late Christmas recess, upon the subject of the jurisdiction of courts of equity in these cases.

In some remarks made in this journal a few months since (p. 845, last vol.), in considering the effect of the decision of Vice-Chancellor Wood in a case (*Braham* v. *Bustard*, 11 W. R. 1061) where he protected the use of the name of "The Excelsior White Soft Soap," we took occasion to refer to the advance of judicial opinion in courts of equity towards the adoption of the title of "property," as applied to trade marks proper, and we observed that doubtless, before long, they would acquire all the incidents of property. Our prophecy has been fulfilled; the Lord Chancellor, in his recent judgments in *Hall* v. *Barrows* (an appeal from the Rolls) and *The Leather Cloth Company* v. *The American Leather Cloth Company* (an appeal from Vice-Chancellor Wood) has most clearly enunciated the doctrine that the exclusive right to use a particular trade mark, when applied to a particular article of manufacture, is properly called "property," and that, in truth, the whole jurisdiction of courts of equity upon this subject is founded upon this doctrine.

Nothing has tended more, in our opinion, to produce uncertainty of decision in the numerous trade mark cases which have come before the court than the double notion; first, that the right to use a trade name or mark in connection with manufactured goods, could not be considered as a proprietary right; and, secondly, that the basis of the jurisdiction of courts of equity in such cases is actual fraud on the part of the offender. The existence of the latter view is an illustration of the maxim, that "Equity follows the Law." It will be seen by reference to an early case in Popham, p. 144, that, on the common law side of Westminster Hall, the right to relief in such a case depended upon the establishment of a case of actual fraud. The form of procedure was an action on the case for deceit, and Comyns, in his digest, comments on this case as establishing that "it is necessary, in order to sustain the action, to show a fraudulent representation (and fraud is of the essence of the injury), occasioning damage." The decisions of courts of equity down to, and even after, the case before Lord Cottenham, of *Millington* v. *Fox*, 3 M. & C. 338 (1838), proceeded upon a similar principle, proof of actual fraud being considered essential to the plaintiff's right to relief, and the court steadily refusing to recognize any species of property in a trade name or mark. Thus we may account for the decision of Vice-Chancellor Plumer in *Canham* v. *Jones*, 2 V. & B. 218 (1813), where the plaintiff, as the proprietor of a secret medicine called "Velno's Vegetable Syrup," was refused an injunction against the defendant, who, it was proved, sold an article of his own manufacture by the same name. The ground of refusal stated by the judge was, that the bill proceeded upon an erroneous notion of exclusive property subsisting in the medicine, and that if such a claim to monopoly in the sale of it could be maintained without any limit as to time, it became more valuable than a patent, and that the violation of the right, with which the defendant was charged, did not fall within the cases in which the Court had restrained a *fraudulent* attempt by man to invade another's property. We venture with confidence to affirm, that, at the present day, assuming the name to have been given *bonâ fide*, and the article to have acquired a reputation under such name, the injunction, which was refused in this case, would be granted without difficulty.

The same rigid adherence to the doctrine of the courts of law is found in the language of Lord Langdale in another case (*Perry* v. *Truefitt*, 6 Beav. 73 [1842]), when he said, "I own that it does not seem to me that a man can acquire a property merely in a name or mark." And again (*Croft* v. *Day*, 7 Beav. 88 [1843]), the same judge is reported as follows:—"I stated, upon a former occasion, that, in my opinion, the right which any person may have to the protection of this Court, does not depend upon any exclusive right which he may be supposed to have to a particular name, or to a particular form of words. His right is to be protected against fraud, and fraud may be practised against him by means of a name, though the person practising it may have a right to use that name, provided he does not accompany the use of it with such other circumstances as to effect a fraud upon others." It is, however, evident from the report of the former of these two cases, that Lord Langdale felt the difficulty of his view when considered in connection with the case of *Millington* v. *Fox*, which had been decided a few years previously.

The last-mentioned case must be considered as introducing a new, broader, and more reasonable doctrine into the decisions of courts of equity. Lord Cottenham there restrained the use of the name "Crowley Millington," stamped upon manufactured steel, which had been introduced by the original manufacturers a century back, and the right to use which had devolved on the plaintiffs, although it appeared that the defendants had used the mark *in ignorance* of the existence of the plaintiffs' firm, and of the origin of the marks themselves, believing them to be marks used universally in the steel trade. This decision is unintelligible, upon the assumption that the jurisdiction of the Court depends upon the existence of actual fraud on the part of the defendants, and can only be explained on the principle that the plaintiffs had an exclusive right of property in the name which had been violated.

The same view was adopted by Vice-Chancellor Wood in *Welch* v. *Knott*, 4 K. & J. 747 (1857), where he said that he could not permit the defendant to use the plaintiffs' bottles, which contained the words "J. Schweppe & Co., 5, Berners-street, Oxford-street, Genuine Aërated Waters," in such a way as to mislead the public, "*although there might be no intention on his part to mislead.*" After this clear expression of opinion it is a matter of surprise that the same distinguished and careful judge (*The Leather Cloth Company* v. *The American Leather Cloth Company*, 1 H. & M. 287) should be reported to have said—"All these cases of trade marks, therefore, turn, not upon a question of property, but upon this, whether the act of the defendant is such as to *hold out* his goods as the goods of the plaintiff." If the jurisdiction does not depend upon the knowledge by the defendant of the plaintiff's rights, it is obvious that it cannot be measured by the conduct of the defendant, but must rest upon some infringement of a right of property in the plaintiff, which gives him a ground to complain of the injury which, in fact, though ignorantly, he may have sustained by the acts of the defendant.

It is true that an injunction will not be granted by a court of equity, unless it appear that the plaintiff's trade has been, or is, injured by the conduct of the defendant; but, as was pointed out by the present Lord Chancellor in his judgment on the recent appeal from the Rolls in *Hall* v. *Barrows*, the mistake of buyers in the market, under which they, in fact, take the defendant's goods as the goods of the plaintiff, that is to say, imposition on the public becomes the *test* of the property in the trade mark having been invaded and injured, but is not the ground on which the Court rests its jurisdiction. The true principle, therefore (he adds), would seem to be that the jurisdiction of the Court, in the pro-

tection given to trade marks, rests upon property, and that the Court interferes by injunction, because that is the only mode by which such property can be effectually protected. Accordingly the plaintiff must prove—first, that he has an exclusive right to use some particular name or mark in connection with some manufacture; and, secondly, that that name or mark has been adopted, or is used, by the defendant, so as to prejudice the plaintiff's custom, and injure him in his trade.

The doctrine that the exclusive use of a trade name or mark, in connection with a particular article of manufacture, is rightly classed under the head of "property," being thus established by the highest authority, it must be accepted, with all its consequences. The proprietary right must carry with it the right of alienation. *Cujus est dare ejus est disponere.* Accordingly, the Master of the Rolls' decision in *Hall* v. *Barrows*, that a trade mark used in connection with the manufacture of iron, and which denoted the persons by whom, and not the place where, the article was manufactured, could not be sold as part of the business property, was reversed by the Lord Chancellor, who ordered it to be included in the valuation, to be made in anticipation of a sale of the property of the business.

There is, however, one part of the Lord Chancellor's judgment in *The Leather Cloth case*, which calls for attentive consideration, inasmuch as, at first sight, it appears to limit the breadth of his views, as to the nature of the property in a trade name or mark. In the course of the argument he referred to an American case of *Partridge* v. *Menck*, Dow. Appeal Cas. 599, as an authority for the doctrine that the Court would not protect A. in the sale of his own goods under the name of B., the original manufacturer, and in his judgment the Lord Chancellor put the case of a firm of clothiers in Yorkshire, buying from another firm of clothiers in Wiltshire, the right to use the name of the latter, which having been stamped on broad cloth had, in a course of years, given a great reputation to the cloth manufactured by them, and he said that a court of equity would not protect the purchasers in the use of such a name or mark as applied to their own article of manufacture. The passage from the judgment in the American case is as follows:—"But where a person manufactures and sells an article under the name of the original manufacturer, although he may have purchased of such one the secret of his manner of preparing the article, and also the right to use his name, he is not entitled to be protected."

It is most important that the view here expressed should be carefully considered, lest, by a superficial application, it be made to affect cases in respect of which the new doctrine laid down by the Chancellor, as to the existence of "property" in the use of a trade name or mark, ought to be rigidly enforced. Take an example:—A. introduces into the market a new article of manufacture, made according to a secret process. He calls the commodity by a fancy name, under which it acquires a reputation. The public recognise it by that name, and buy it upon the faith that it is the genuine article, regardless of the person who manufactures it; often, indeed, in perfect ignorance of the name of the original manufacturer. The circumstance that A. manufactures it is very material to him, but is wholly immaterial to the public. Meanwhile A. has acquired a "property" in the use of the name which, according to the decision of Vice-Chancellor Wood, in the *Excelsior case*, entitles him to a perpetual injunction to restrain others from selling their own articles of manufacture under the same name. He wishes to retire from the business of the manufacture and sale of the article. In consequence of the value of the secret process, and the notoriety of the article, he obtains a ready purchaser of the business, and the right to use the fancy name. The purchaser manufactures precisely the same article, and sells it by the same name. Is it to be said that, by reason of the retirement of the original proprietor, the right to use this fancy name has become common property, and that the exclusive right to the name which the public had, by its favour, vested in the original manufacturer—not because he was the manufacturer, but in consequence of the superior quality of the article manufactured—is yet so personal to the original manufacturer that it cannot be transferred by him to another? We think not. We consider that the right to the use of the name which may have been acquired, and which is exercised, irrespectively of the person manufacturing, ought not to be limited to the first proprietor, but that provided *the same article* is manufactured and sold by the subsequent purchaser, the exclusive right to sell it under the same name ought, so to speak, to run with the *bonâ fide* manufacture of the article.

That this is really the view of the Chancellor is, we think, evident from his decision in *Hall* v. *Barrows*; and any uncertainty which may be produced by his observations in the other case, which we have just referred to, will disappear if they be understood to apply simply to the case of a manufacturer selling, by the former name or mark, not an article *bonâ fide* manufactured in the same manner as that which acquired the reputation, but another article of his own manufacture, to which, without fraud or deceit, the name or mark could not be applied. That this is also the sense in which the case from the American reports is to be understood, may, we think, be fairly gathered from the circumstance that the dictum set out above, as to the inalienability of the exclusive right to use the name of another manufacturer, is followed by the statement that "the privilege of deceiving the public for their own benefit is not a legitimate subject of commerce, and that, therefore, it makes no difference that the complainant had purchased the right to use the name of the first proprietor. A party asking equity must come with clean hands." A man may not sell his own goods under the name or mark of another manufacturer, but he may, we think, acquire, by transfer, the exclusive right to make and sell, under the same name or mark, an article manufactured by himself, provided it be *bonâ fide* the same article of manufacture as that which has previously gained a reputation under the same name or mark.

We are glad that the refinements and uncertainties of judicial decision on the subject of trade names and marks, has been brought to the attention of the Lord Chancellor, and that, under his authority, the extent of the jurisdiction of courts of equity in granting injunctions in such cases, has been defined in a broad and philosophical manner.

COUNTY COURT DEFENCE UNDER BANKRUPTCY DEED.

An extremely common point, in relation to the last Bankruptcy Act, has been decided by Mr. Francillon (County Court Judge for Circuit No. 53), and, from the frequency of its recurrence, we think it right to call our readers' attention to it, and to submit the decision thereon to criticism.

It is well known that defences in the county court can *generally* be set up without any written plea or notice of any kind. To this general rule s. 76, 9 & 10 Vict. c. 95, makes an exception as regards these six classes of defences—viz., set-off, infancy, coverture, Statute of Limitations, "*discharge under any statute relating to bankrupts*," or insolvency. This section requires defendants to give such notice of these special defences as shall be required by the rules of court; and those rules require the notice to be in writing, and to be delivered to the registrar five clear days before the return day of the summons (Co. Co. rules, 66-72).

The question is, whether a composition deed under s. 193 of the Bankruptcy Act, 1861, is a "discharge under any statute relating to bankrupts," so as to require a defendant to give special notice if he seeks to set it up as a defence to an action brought in a county court?

This point recently arose before Judge Francillon, at Cheltenham. On the first argument he reserved his judgment, which, on the 11th of December, 1863, he delivered in writing as follows:—

"BEARD *v.* BROOKE.

"In this action for a debt, Mr. Taynton for the defendant, pleaded a deed, executed by three-fourths in value of his creditors, as binding on the plaintiff, though not executed by him. Mr. Marshall, for the plaintiff, objected to the reception of this special defence, on the ground that notice had not been given of it as of a discharge in bankruptcy. Mr. Taynton argued to the effect that a discharge, in respect of which a notice of defence must be given, is a discharge made by the order of a court or commissioner, and that the deed now pleaded, is plainly not a discharge of that sort; but that, containing a release by the creditors executing it of their debts, it operates under the statute, as a release of the plaintiff's debt, as if executed by him.

"The 76th section of the statute, 9 & 10 Vict., c. 95, establishing the county courts, provided that no defendant in any court, holden under the Act, shall be allowed to set up by way of defence, and to claim and have the benefit of his discharge, under any statute relating to bankruptcy, without the consent of the plaintiff, unless such notice thereof, as should be directed by the rules for regulating the practice of the court, should have been given. Of the County Court Practice Rules, the sixty-sixth* contains directions as to the notice thus made requisite.

"The 192nd section of the Bankruptcy Act of 1861, provides that 'every deed or instrument, made or entered into between a debtor and his creditors, or any of them, or a trustee on their behalf, relating to the debts or liabilities of the debtor, and his release therefrom, or the distribution, inspection, management, and winding-up of his estate, or any of such matters, shall be as valid and effectual and binding on all the creditors of such debtor as if they were parties to and had duly executed the same;' provided several conditions expressed in the section are observed. One condition is that three-fourths in value of the creditors, whose debts respectively amount to ten pounds or upwards, shall assent to the deed.

"In the case before me, the deed, not having been executed by the plaintiff, is plainly not a release by him. Upon the supposition of the conditions expressed in the 192nd section having been observed, the deed is by force of the Act, and only by force of the Act, binding on the parties executing it. Upon the same supposition, it is under a statute relating to bankruptcy, a release, in other words, a discharge, of the bankrupt in respect of his debts due to his creditors not executing it. As respects those creditors, the deed is either a discharge by force of the statute, or it is nothing. *I think, therefore, that the special defence offered in this action is inadmissible for want of notice.*

"I think that, by reason of a deed of this sort having less publicity than a regular bankruptcy, that is a case to which the policy of the law, requiring a notice, is more applicable than to the case of a regular bankruptcy.

"Moreover, I think that the 197th section of the Bankruptcy Act of 1861, may be deemed to lead to the conclusion to which, on other grounds, I have arrived. If the words of that section are closely studied, it may appear that under a deed like this the creditors have, as between themselves and the debtor, all the same rights and remedies as in a case of bankruptcy.

"Judgment is given for the plaintiff."

Now, with the greatest possible deference, we venture to question the learned judge's opinion.

In the first place, we question whether a defendant is, now, bound to give the notice referred to, even where he obtains an ordinary discharge in bankruptcy from the hands of a commissioner or judge. The words of the 76th section of 9 & 10 Vict. are, "under any statute *relating* to bankrupts." Surely this means any statute that related to bankrupts at the time the County Court Act passed (*i. e.* 1846). If it had been intended to comprise future bankruptcy Acts, it would have been easy to have said so, and there is a common form of words for the purpose. The then bankruptcy Acts might have rendered a special notice a mere matter of justice, but subsequent Acts might make such a notice altogether superfluous. But we need give no reasons. There is the plain language. "Relating" is a word of the present tense, and is equivalent to "now relates;" and if so in the section before us, then there is no longer any necessity to give notice in the county courts of any bankruptcy defence; for of course our readers are aware that all the bankruptcy Acts in force in 1846 are now abolished. We admit, however, that as a mere question of grammar and construction, it may be open to a difference of opinion, and we should not have ventured to have opposed our opinion to that of the learned county court judge, merely on this ground.

But, even yielding this point, and assuming that still notice must be given of a "discharge" under the present bankruptcy Acts, then it does seem a strong thing to say that a deed of release is a discharge in bankruptcy. The provisions relating to the present class of deeds are, to be sure, found in an Act relating to bankrupts; but can it be said, therefore, that the deeds under those provisions are "discharges" under an Act relating to bankrupts? The very object of such deeds is to prevent the bankruptcy of the persons executing them. Those deeds may be absolute releases or not. Their form and substance may vary infinitely. How then can it be predicated that every deed under section 192 will be a release at all? still less, how can it be a "discharge" under a statute relating to bankrupts, when the person making it will, in all probability, never become a bankrupt at all?

But what principally weighs with us is this,—we believe we are right in stating that composition deeds, binding non-assenting creditors, were first established by the Bankruptcy Act of 1849. Can it be supposed that in 1846 the Legislature meant the term "discharge" to apply to a proceeding that was unknown till 1849?

On the whole, we venture to think that a "discharge" in bankruptcy means what is commonly understood by that phrase—viz., a discharge given to a bankrupt after he has satisfied the routine requirements of the bankrupt law; we cannot think it includes a possible release under an arrangement or composition deed. Whilst, therefore, we recommend that notice be given where a defence under such a deed is intended to be set up, yet we do this in order to put our readers on the safe side, for we cannot think it absolutely necessary.

* And six following sections.

RAILWAY COMPENSATION CASES.

Next session it will be necessary for Parliament to subsitute some new method for ascertaining the value of land taken by railway companies, instead of that which is now provided by the Lands Clauses Act, 1845. That has long been found an intolerable engine of oppression to persons whose property has been invaded under statutory powers, and especially to those who have been turned out of house and home—or still worse, of their shops and business offices—by railway companies, acting in pursuance of the powers conferred upon them by Parliament. The Lands Clauses Act compels the claimant in such a case, unless he is prepared to take what the company is willing to give him, to go before a jury or an arbitrator, or, if he be but a yearly tenant, before a magistrate. Going before either a jury or an arbitrator is the undertaking of a heavy litigation with an opponent of towering strength and infinite resources, where the principal evidence is of the most expensive kind, while those

who can supply it are, for the most part, notoriously under the thumb or at the beck of these powerful companies. Enormous costs are thus incurred, and, very often, with a result that is a public scandal to our Legislature. The evil has increased by degrees, just in the proportion that it has become the fashion to rest such cases upon professional testimony. "Compensation surveyors," like mad-doctors, are called in to speak to the value of premises with which they have become acquainted only by a cursory inspection; and for an opinion thus formed in the course, perhaps, of half-an-hour, these gentlemen usually receive an *ad valorem* fee, amounting to a considerable per centage on the value of the property. In some cases it would take but a few valuations on both sides to devour the whole purchase-money. It is no wonder, therefore, that the attacks which have recently been made upon the trade of these professional witnesses, should have caused a great commotion amongst them, or that, in the course of time, the victims should raise an outcry that commands attention from the public generally.

It is clear that something must be done with as little delay as possible, and the only question is, what it ought to be. At present, under section 85 of the Lands Clauses Act, the promoters of an undertaking may enter upon land before an award is made, or a verdict is given, for the purchase-money or compensation, upon depositing in the Bank, by way of security, such a sum as a surveyor appointed by two justices shall fix; and as the surveyor appointed by the justices is very often the nominee of the company, it follows that the price so fixed is generally estimated from the company's point of view; so that, in effect, the company may turn a man out of his land, and even out of his house, not only before the compensation is determined by an arbitrator or a jury, but even without adequately securing the compensation when it is so determined. Meanwhile, the claimant, who is unwilling to accept the sum fixed by the company, proceeds to lay his case either before an arbitrator or a jury. In the case of arbitrations the umpire appointed by the Board of Trade is the judge of final resort, and as he is generally a railway valuator, he can hardly be regarded as a person well calculated for the discharge of judicial functions; neither is it surprising that he should be generally open to the suspicion of a leaning in favour of those who may be, at the very time, or whom he may be desirous of becoming, his employers. Therefore, the first change necessary is in the tribunal for such cases. There is no reason whatever why they should not be decided by the ordinary tribunals of the country, and according to the law of the land. If a trifling trespass or encroachment upon the property of a landowner or householder gives the right to bring an action before one of the superior courts, why should he be deprived of this right when his land is entirely taken away from him, or his house pulled down about his ears? Surely, in the latter case, there is greater need for a learned and able judge—one who is not only conversant with the law, but accustomed to the discharge of judicial functions—than in the former. It is a monstrous hardship that, under such circumstances, a man should be completely at the mercy of any railway valuator whom the Board of Trade may choose to appoint for the nonce, and be exposed to the risk of crushing costs in case he shall not be awarded more than he was originally offered by the promoters.

It may be said, however, that a discontented claimant is at liberty to go before a jury summoned by the sheriff, and presided over by that functionary. But there are also special reasons for being dissatisfied with such a tribunal, where there is any heavy stake at issue. It not uncommonly happens that of the jurors so summoned but a few attend, and then the jury has to be made up from among the "bye-standers or others that can speedily be procured." Thus, a man who has been turned out of his land or his house is at the mercy of the merest accident. A correspondent in the *Times* mentions a recent case of this kind. "A friend of mine," he says, "had recently a case before a sheriff involving a heavy trade loss. Only five of the jurymen attended, and the number was made up with men of whom it would be scarcely unfair to say, from their appearance, that £100 would be to either of them a fortune. The result was a verdict of £500, where it unquestionably ought to have been at least £3,000. Why, may I ask," he adds, "should a claimant not be entitled to have a special jury, as in superior courts, where comparatively small interests are in jeopardy?" The true remedy in this case also is what we have already suggested—namely, that these railway compensation cases should, after the statutory machinery of negotiation has been exhausted, be treated in the ordinary manner. The steps in the "treaty" ought to be made conformable to the requirements of pleading, as, in fact, they have been in France. There the companies are obliged to make the first offer. If this is not accepted within a given time, the owner on his side must make a claim; and then, if the parties cannot agree, and the matter goes to either a jury or an arbitation, the costs are apportioned between the parties, according to the award. Thus, if the claimant gets the whole of his claim, the company pay the whole of the costs, and *vice versâ*. If any intermediate sum is awarded, the costs are assessed to be paid *pro rata*. This seems to be a very fair course, and to check alike exorbitant demands and unfair offers. When once the issue has been raised as merely one of value, there is no reason why that should not be tried, according to the amount in question, either before one of the superior judges, or one of their county court brethren. In such a tribunal, the paid evidence of professional witnesses would be taken only according to its real worth, and there would be as little fear of miscarriage, by reason of an interested judge, as of an ignorant and incompetent jury.

The main evils of the present system have arisen from a tendency—which we have frequently pointed out of late—of foisting persons who ought to be nothing more than witnesses, to the judicial bench, and of assigning to them functions which can be satisfactorily discharged by none except educated lawyers. In many of these compensation cases a number of questions arise, involving purely legal considerations, and a good deal of testimony is adduced, which, of course, ought to be subject to the ordinary laws of evidence. A railway valuator or compensation arbitrator is therefore a very unfit judge in such a case, although he might be a useful witness. Even in the latter capacity we know that in courts of law their evidence does not count for much when brought into conflict with the testimony of facts, or even the well-grounded opinions of disinterested persons. At all events, the matter has now evoked so much discussion, and has been so freely handled by the press, that the Legislature can hardly refrain from taking it up soon after Parliament meets.

EQUITY.

ÆQUITAS AGIT IN PERSONAM.

No. II.

The cases cited by us last week show how difficult it is to lay down any clear principles in exposition or development of this maxim. They appear, however, to show generally that the Court of Chancery will, in many cases, enforce, as far as possible, by its decree, an equity against a person, although the *res*, or the proper *forum rei sitæ*, or the *forum contractus*, may be foreign. The following case shows also that a court of equity sometimes decrees general administration of the estate of an intestate, the bulk of whose property is situated abroad:—

In *Meiklan* v. *Campbell*, 24 Beav. 100, a domiciled Scotchman, who occasionally resided in England, where

he died, possessed of some property, but of small amount compared with what he had in Scotland, Sir J. Romilly, M.R., ordered the administration of his estate in England, observing, however, that there was nothing to prevent the adoption of any proceedings in the Scotch courts, or any accounts taken there.

But where it is sought to enforce a lien on, or otherwise to affect *in rem*, immoveable property of defendants, situate out of the jurisdiction, there must be privity of contract or mutual rights between the parties, or some personal obligation moving directly from one to the other. Thus, where a director of a company established in England to work some Prussian mines, had paid a large sum towards the purchase, and the vendor afterwards annulled the contract and resold the mines to a new company with notice, a bill by the representative of the director to establish a lien on the estate for the advances was dismissed, upon the ground there was no personal equity affecting the new purchaser (*Norris* v. *Chambers*, 29 Beav. 246).

In *Maunder* v. *Lloyd*, 2 Joh. & Hem. 724, Vice-Chancellor Wood held that the Court of Chancery had jurisdiction to take the accounts of a partnership formed under a contract which was to be carried into effect in Hayti although, the contract was governed by the law of Hayti, upon the principle settled by *The Carron Iron Company* v. *M'Laren*, 5 H. L. Cas. 416—viz., that the law to regulate the transactions of a partnership is to be supplied by the place where the business is to be carried on.

In *Jones* v. *Geddes*, 1 Phil. 724, the plaintiffs were assignees of a bankrupt who was entitled to real estates in Scotland, which he had fraudulently charged with various heritable securities, and the object of the suit was to restrain the defendants, the obligees, who were resident within the jurisdiction, from prosecuting a suit in the Court of Sessions for the purpose of realising their security. There Lord Lyndhurst seems to have entertained no doubt that, as the parties resided in England, the Court had jurisdiction to try the question of fraud, and, if established, might order the instrument to be delivered up to be cancelled, and refused an injunction which was asked, only upon the ground that the matter might be more conveniently litigated in Scotland.

A question has sometimes arisen, in suits before the Chancery Court of the palatine of Lancaster, whether, upon the principle *æquitas agit in personam*, its decree against persons within its territory will operate in determining the rights of parties to immoveable property situate outside its territory: and this abstract question has not yet been conclusively settled, although Sir J. Romilly, M.R., in *Wynne* v. *Hughes*, 26 Beav. 377, decided it practically, as to any conflict of jurisdiction between the two courts, by refusing to stay the proceedings in an administration suit instituted before his Honour, notwithstanding a suit for the same purpose had been instituted in the palatine court—part of the subject-matter being lands locally situate out of the territory of the latter court.

In *Maclean* v. *Dawson*, 27 Beav. 25, 4 De G. & Jo. 150, a bill was filed to set aside, on the ground of fraud, a purchase from the plaintiff by a Scotchman of certain shares in a company. The purchaser died domiciled in Scotland, and leaving no property in England. There were three executors, of whom two were resident in Scotland, and one here; and, in that case, the question was, whether, under Con. Ord. X., 7, the Court would order the service of copy bill on the two executors resident in Scotland. Knight Bruce, L.J., in giving judgment on the appeal, said, "Looking at the subject-matter of the suit, which relates to moveable property, and does not at all relate to immoveable property beyond the jurisdiction of the Court, looking also at the fact that the dispute is not between foreigners, nor between foreigners and subjects of the Queen, but wholly between subjects of the Queen who are resident in this island, and considering that if any circumstance should bring these gentlemen to England, even for a merely temporary purpose, they might be served in the ordinary way, and the suit would proceed, I am of opinion that, though the plaintiffs may, in proceeding with their suit, be liable to much risk of failure, their case is not so evidently bad as to justify the Court in refusing to allow that service to take place in Scotland which would be clearly good if made here."

Having in a former paper, and also above, referred to a number of cases as illustrations of the manner in which courts of equity have applied the maxim "*Æquitas agit in personam*," we may now make a few observations upon the origin of the maxim, so far as it is traceable in the history or peculiar jurisdiction of courts of equity.

Jurisdiction may be founded either *in rem* or *in personam*.* Indeed, if neither the thing nor the person sought to be affected can be reached by the decree of a Court, it must be nugatory. Every system of jurisprudence, therefore, recognises the distinction between the jurisdiction which arises by reason of the domicil, or the residence of the defendant, and that which arises by reason of the situation of the property in dispute, being within the judge's territory:—(there are, of course, other *grounds* of jurisdiction—*ex. gr.*, the fact of the place of the contract, or the cause of action, being within the territory of the tribunal).

It is evident that the character and procedure of a tribunal will be very much influenced according as it seeks to act directly or primarily as against the *person*, or as against the *property* of the defendant.

In this respect there was originally a broadly-marked distinction (of which there remains some noticeable traces) between the court of chancery and the courts of common law. The distinction was not merely theoretical, but involved some striking differences both in the jurisdiction and the process of the two sides of Westminster Hall. Allusion is not here made to real actions at common law as distinguished from personal actions, for in truth there was in this respect an analogy in certain proceedings of courts of equity, inasmuch as they sometimes operated by their decrees upon the land itself. But this was only exceptional and incidental, and in truth, the objects of the two jurisdictions were different, and there were consequent differences in their procedure and process.

From the earliest times, down to the present, the primary objects of courts of common law† was, as far as possible, to give effect to their judgments *in rem*. This is obviously so in real actions, but not less the case in personal actions. In the latter, the plaintiff claims either the recovery of a debt, or of a specific personal chattel, or satisfaction in damages for some injury done

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* "The real right which belongs to a proprietor, or to the holder of a mortgage or pledge, is called a *jus in re*. When there is only a personal right to a thing to be enforced by action, the legal ownership belonging to another, this personal claim is called a *jus ad rem*. A *jus in re* implies a complete acquisition: a *jus ad rem* is a mere right to acquire a thing. The difference is nearly the same as that between property and obligation. These terms are not Roman, having been borrowed from the Canonists. To the uninitiated this distinction may appear trivial, but it enters deeply into legal descussions, and sometimes helps the solution of difficult problems." — Studies in Rom. Law, by Ld. Mackenzie, p. 155-6. See Colquhoun's Summary Civil Law, 3rd vol., § 2022,3,4; and also Erskine's Ppls. of the Laws of Scotland, 12 Ed., pp. 16, 17, ss. 9, 11, and *London and North-Western Railway Company* v. *Lindsay*, 6 W. R. 396.

† No action in the King's Courts (of Common Law) could be commenced without a writ, in the form of a precept or mandate from the King, under the great seal, addressed to the sheriff of the county in which the cause of action arose, or where the defendant resided, commanding him to cause the party complained of to appear in the King's Court on a certain day, to answer the complaint; and every writ was founded on some rule of law—*regula juris* (1 Sp. Eq. Jur. 220). But in Chancery no writ was necessary, the suit not being founded on any *regula juris*, and all that the plaintiff had to show was, that his was a case which ought to be entertained, as a matter of grace (1 Sp. 368); whereupon, if the case made by the bill was considered to warrant it, a *subpœna* issued (the practice is now governed by the 15 & 16 Vic. c. 86). Sometimes the Chancellor wrote a letter to the defendant, urging him to do justice (Sp. 369). But the *subpœna* required the defendant to answer *in propriâ personâ*, and the personal appearance of both parties was considered essential, so much so, indeed, that originally it was only on special grounds that a person was allowed to sue by attorney.

to his person or property; and the various writs for carrying into execution the judgment of the Court, are all immediately directed *in rem*, their object being to recover immediately the specific property from the defendant, or to enforce payment out of his property of the sum for which judgment has been obtained. This was obviously the intention in the writs of *fieri facias*, *levari facias*, and *elegit*; and even the writ of *capias ad satisfaciendum* was designed to force the defendant to make satisfaction, by enabling the person who obtained the writ to keep him in custody until he did so. But originally a decree of a court of equity, unless it were for the land itself, operated only *in personam*; and the sole method of, or at all events the first step towards, its enforcement, was by the process of contempt against the party in disobedience, who thereupon became liable to arrest and imprisonment, until he complied with the decree. No doubt the party entitled to its benefit might obtain a writ of sequestration, which would have the effect of depriving the party in contempt of his personal estate, and also of the rents and profits of his real estate, until he had cleared his contempt. But even this process of sequestration was, until a comparatively recent date, only an indirect means of obtaining the benefit of the decree for the party entitled to it. It was in recent times that there sprung up the practice of applying the money received by the sequestrators in satisfaction of the duty to be performed by the party in contempt. (See 2 Dan. Ch. Pr. 690, *et seq.*, and also Smith Ch. Pr. 122, *et seq*, as to the origin and effect of writs of sequestration, and the differences between a writ of sequestration and a writ of *elegit*.) In cases where the land was not the subject-matter of the suit, a decree in equity had not formerly the same effect as a judgment at law in binding the real estate. The statute 1 & 2 Vict. c. 110, s. 18, has removed this anomaly in the case of decrees registered under the Act, and the statute further assimilates the effect of decrees of courts of equity and judgments at law. Still, however, the court of chancery retains the process of contempt, and so acts upon the person in disobedience for non-compliance with its decree; and, in other respects, in all suits in equity, the primary decree is *in personam*, and not *in rem*, and this distinction is not without results of some importance, as we have seen in the cases cited above, and in our paper on the same topic last week.

REAL PROPERTY LAW.

Repairing Lease under Power.

Easton v. *Pratt*, Ex., 12 W. R. 157.

"There is not much in the books," observed Mr. Chance, writing above thirty years ago, in his Powers, "with reference to powers to grant building or repairing leases." In the interval, one case only has preceded the present on the question—What exercise of a power to grant such leases is good in respect of the acts which the lessee binds himself to do to the demised property? Yet the matter must be of no uncommon occurrence; so that a brief notice of these authorities will be serviceable.

The former case, *Doe* v. *Withers*, 2 B. & Ad. 896, came before Lord Tenterden as a special case, with these circumstances:—Dymoke devised a house to his son for life, with power to lease for any term not exceeding sixty-one years, "for the purpose of new building or effectually rebuilding and repairing any messauge," &c. The son leased for the term, the lessee covenanting to expend £250, at least, for the purpose of effectually repairing to the lessee's satisfaction, and also, when the house should be so well and effectually repaired, as aforesaid, to repair and uphold the same as need should require. Lord Tenterden considered that re-building meant something more than repairing, and that the limit of £250 was not in accordance with the power. On the latter point, were the decision to rest upon it, Parke, J., thought that there should be inquiry whether £250 were adequate. Taunton, J., took the first only of the two grounds of Lord Tenderden; Patteson, J., both grounds. *Doe* v. *Withers*, therefore, is an authority that a power to lease for the purpose of new building or re-building and repairing cannot be read distributively, as a power to grant the one kind of lease for the purpose of new building or re-building, and the other kind of lease for the purpose of repairing, but that every lease to be granted must be for both purposes. The contrary construction, that either a building or rebuilding lease or a repairing lease might be granted, does not seem to be inconsistent with the natural meaning of such language in a power. The language would not even require any conversion of "and" into "or." Lord St. Leonards', in the sixth edition of his Powers, p. 829, commenting on the case of *Doe* v. *Withers*, puts a comma at "new building," but the comma (if any) might equally well be placed at "re-building." His remarks, however, are in favour of the lease. Had the power in *Doe* v. *Withers* been given to grant merely repairing leases, it was, in the opinion of two of the judges, improperly exercised. The qualification of the lessee's liability by the specification of a sum of money, although the least that was to be expended, and although the repairs were to be done to the lessor's satisfaction, would, in the first place, mix up the other parties interested in the settled property with the inconvenient question of the necessary cost of the repairs contemplated by the settlor; and, in the next place, would constitute the lessor the judge of the sufficiency of the repairs, to the exclusion of the remaindermen. The inquiry suggested by Parke, J., would not be very salutary; for, independently of the difficulty of coming to any satisfactory conclusion on the speculative evidence of builders and surveyors, the remaindermen would, assuming that the £250 were proved to be adequate, still find themselves in the embarrassing position of being obliged to ascertain that the amount was laid out to proper advantage. It may, consequently, be regarded as pretty clear, that none but absolute covenants would satisfy a power to grant repairing leases, although the point was not actually decided in the Queen's Bench.

Supposing, then, that the lessee's covenants are sufficient in point of absoluteness, we have to consider their extent. In the present case, the power, by will, was given to the devisee for life of a dwelling-house, tan-yard, sheds, &c., to grant leases of the whole, or any part, for a term or terms not exceeding twenty-one years, at a rack rent, "or building or repairing leases, for the term of sixty-one years." The lease granted by an exercise of the power was for forty years: there was no covenant by the lessee to build, but there was a covenant by him, as often as necessity should require during the term, "well and sufficiently to repair, uphold, support, paint, maintain, amend, and keep," the demised property, and all buildings thereafter erected by him, and all pavements, walls, &c., with all manner of needful reparations; and, further, that the lessee, as often as need should require, would bear a reasonable proportion of the costs of repairing all party-walls, party-gutters, sewers, &c., and likewise that the lessor, with surveyors, workmen, &c., might enter, and view, and give notice for the amendment of defects and wants of reparation, and that the lessee would, within three months, make good all such defects and want of reparation. After the death of the tenant for life, the remainderman brought ejectment against the lessee, and, on a question of pedigree, a verdict was given for the plaintiff, with liberty to the defendant to move to enter a verdict, the state of the premises to be ascertained forthwith by an arbitrator. The arbitrator found that, at the granting of the lease, the premises, although habitable and in fine tenantable repair, were, nevertheless, so old and decayed as to be likely at any time to become untenantable. A rule was obtained and cause was shown on the ground, among others, that the lease was not a repairing lease, but contained no more than the ordinary covenants to repair. Pollock, C.B., was clearly of this opinion. Channell, B., also, taking into

consideration the circumstances found by the arbitrator. Pigott, B., taking the same view, attributed force to the expression "building or repairing;" and Bramwell, B., concurred, that the lease was not a repairing lease, either in terms or, regarding the extrinsic circumstances, in fact; for that in a repairing lease it was not only necessary to put the premises in good repair then, but to do so again, if needful, at the end of twenty years.

FORFEITURE OF PURCHASER'S DEPOSIT.

Depree v. *Bedborough*, V. C. S., 12 W. R. 191.

Usually, in conditions of sale, any question as to the right to the deposit upon the purchaser's failure to complete his contract is shut out by a provision that, in such an event, the deposit shall be forfeited to the vendor; and the condition proceeds to the effect that the vendor shall be at liberty to re-sell, and the deficiency in price (if any) on a second sale, and the expenses of it, be made good by the defaulter. In the present case, where the sale was under a decree, a condition of the contract provided only that, if any purchaser should not pay his purchase-money at the time named, and perform the other conditions, an order might be made for re-sale, and for payment by the purchaser of any deficiency and of the expenses in a re-sale. Mr. Boucicault, the purchaser, becoming bankrupt and unable to complete, and his assignees electing against the contract, a motion came on for a re-sale and forfeiture of his deposit.

Where a contract makes no specific provision respecting the deposit in case of failure to complete, the question whether the deposit is forfeited, said Lord Denman in *Palmer* v. *Temple*, 9 A. & E. 520, quoted by Lord St. Leonards (Vend. & Pur. p. 40, 14th edit.), depends on the intention to be collected from the whole instrument. Thus, in *Palmer* v. *Temple*, where the stipulation was that either party refusing to perform should pay £1,000 as liquidated damages, the intent of the parties was held to be clear, that there should be no other remedy. The vendor might sue for the penalty, but (both parties having, in fact, treated the bargain as at end) he could not retain the deposit, for that must be considered, not as an earnest to be forfeited, but as part-payment, which idea of part-payment fell to the ground when the bargain no longer subsisted: the vendor held the money advanced to the use of the purchaser. But, in such a case, the purchaser will not be able to recover the deposit before the contract has been rescinded, nor unless the non-fulfilment has arisen from the vendor's act.

An implication of intention that there should be no forfeiture of the deposit was attempted in the present case, from the liability which the contract imposed on the purchaser of bearing the expenses of a re-sale (*Casson* v. *Roberts*, 11 W. R. 102), but the argument was not successful. The condition for re-sale and payment of the expenses of it did not, in the opinion of Vice-Chancellor Stuart, apply to the purchaser's failure through bankruptcy, in which case the right to have a re-sale arose from other circumstances than those contemplated in the condition. The Court exacted a deposit as a security against default of performance. After the purchaser's bankruptcy his right was transferred to his assignees, who had an option to go on or abandon the contract. There was clearly default on the purchaser's part, and he could not acquire, in consequence of it, a right to the money deposited as a security against default; his assignees had no better claim. By renouncing, they abandoned the deposit. There was in the case the peculiarity of the Court's position as depositee, by which it had a large power as to the rights of any person making a claim upon the deposit. The order made was, that, the deposit having been forfeited, there should be a re-sale.

The present case, involving thus two special elements—first, determination by authority of law of the contract; secondly, interpretation by the Court of its own intention in the deposit—cannot be regarded as decisive of the question, whether, in the absence of express provision, or of indication of intention, the deposit becomes forfeited by the purchaser's breach. Where the seller has not parted with the subject of the contract, Lord St. Leonards considers it clear that the purchaser cannot recover the deposit, for he cannot, by his own default, acquire a right to rescind the contract; and, if the vendor sells after the purchaser's default and consequent loss of right to enforce the contract, Lord St. Leonards argues that the sale, prejudicing no right of the purchaser, cannot impart to him a right to rescind a contract which he has already broken. The sale, it is true, prevents the seller from performing his original contract, but the answer is that he could not be compelled to perform it. See *Lethbridge* v. *Kirkman*, 25 L. J. N. S. 89. It should be borne in mind, however, that in equity there is not an absolute forfeiture under the usual condition, for the deposit will be allowed towards making up any deficiency on a subsequent sale: *Ex-parte Hunter*, 6 Ves. 94. In principle, as we have seen from *Palmer* v. *Temple*, the deposit is regarded not as a pledge, but as part payment of the purchase money. Accordingly, even at law, should the vendor be the party seeking relief, it does not appear that the deposit would not be taken into account in the purchaser's favour, for in the argument of the case last mentioned (see the report in 1 Perr. and Dav. 382), Coleridge, J., interposed the question, "suppose the contract contains no stipulation for a forfeiture of the deposit—could the vendor retain the deposit and sue for damages too?"

BANKRUPTCY LAW.

Notwithstanding the numerous enactments of recent years, fraud still often goes unpunished, especially in the province of Trade. Let us endeavour to solve the cause of the present immunity. Take the case of a retail trader purchasing from a wholesale house a quantity of goods; the retail dealer is fully aware at the time that he is in a state of hopeless insolvency, yet, like a drowning man who catches at a straw, he is nothing loth to receive the goods, and he soon afterwards becomes a bankrupt. The property remains in his possession until the date of the adjudication, when, in all probability, it is seized by the messenger of the court, and sold for the benefit of all the creditors. Numerous instances might be given of cases where the greatest possible hardship has been inflicted by the retailer upon the wholesale firm, who may have been good natured, or, perhaps credulous enough to entrust him with goods. Is there any remedy for this system of deceit? The answer is, none. Who would think, in the absence of proof of wilful misstatement, on the part of the bankrupt, of preparing an indictment against him for obtaining goods under false pretences? As to the 221st section of the Bankruptcy Act, 1861, no penal offence could be proved under that, because it might very easily be replied, in answer to the tenth branch of the section, that the man had carried on business for years; and to the eleventh branch, a complete answer would be given by the fact of the goods remaining upon the premises of the bankrupt until the time of the adjudication. Let the line be drawn where it will, of course some one or other must be the last seller of goods—that may be said to be a misfortune—but the creditors generally often derive the benefit of goods so supplied; or, what is more likely, the sale of them furnishes the bankrupt, or his estate, with the means of obtaining a clear discharge from his debts. It is true that under the 159th section opposition may be made on the ground that the bankrupt had contracted the debt without "any reasonable or probable ground of expectation of being able to pay the same." But, unfortunately, an anomaly here presents itself. Before the creditor can oppose, he must, under the 158th section, prove his debt, and having proved his debt, he cannot, in case of a judgment adverse to the bankrupt, proceed in any way against his debtor—in other words, he must "elect" either to prove and oppose, or to forego proof and abandon

his opposition. Thus an opposition is, for nearly all practical purposes nugatory, and in the result the reckless and dishonest trader escapes. The doctrine of "election" has, in this respect, been pushed much too far. Under the old *regime*, no doubt where a defendant was for months, or perhaps even years, detained in custody at the suit of an individual plaintiff, the law very justly said that the plaintiff in the action could not prove against the bankrupt's estate without giving him his discharge; that if he elected to share the assets with the other creditors, he must not also "go against the person." This, no doubt, was reasonable; but that a creditor should, by operation of law, be held to give up his rights against the person and property of his debtor, before being allowed to say one word, does seem to be a real hardship. The "reason" of the old law was manifest. It would have been unjust that a persistent detaining creditor should be allowed to take his dividend *pari passu* with ordinary creditors, and, at the same time exercise his right against the person of the bankrupt. But now, in the great majority of bankruptcy cases, the idea of assets available for the creditors is quite illusory. In common fairness to the commercial public, then, the legal effect of "proof" should be moderated. What is called "protection" would then, indeed, be valuable, and the dishonest trader, who was "without protection," would suffer the punishment which his misconduct deserved.

CRIMINAL LAW.

We note here a few cases relating to various points in criminal law, which will be found reported in the current volume of the *Weekly Reporter*.

In *Hall* v. *Knox*, Q. B., 12 W. R. 103, the question turned upon the construction of the Poaching Act (25 & 26 Vict. c. 114, s. 2) and the Court of Queen's Bench, in that case, held that it is not necessary, in order to justify a constable in laying an information against any person under the Act, that he should actually search the person of the defendant—it is sufficient if he find the forbidden articles in his possession by any other means.

In the Court of Crown Cases Reserved an important point in the law of embezzlement, turning upon the construction of section 68 of 24 & 25 Vict. c. 96, was determined. The case was *Reg.* v. *Bren*, 12 W. R. 107. In that case two friendly societies having appointed a committee, of which the defendant was a member, to conduct a railway excursion, the committee employed the defendant and several others to sell tickets. It was his duty to pay over the money he received, which belonged to the two societies, to a person appointed by the committee; but he received no remuneration for his services. The Court held, that he was a joint owner of the money received, and not a clerk or servant within section 68.

In *Reg.* v. *Hilman*, C. C. R., 12 W. R. 111, the question turned upon section 59 of 24 & 25 Vict. c. 100, which provides that whosoever shall unlawfully procure any poison or noxious thing, "knowing that the same is intended to be unlawfully used or employed with intent to procure the miscarriage of any woman, whether she be or be not with child, shall be guilty of a misdemeanour."

The Court held that it is not necessary in order to sustain a conviction for the misdemeanour created by this enactment, that it should be the intention of any other person besides the defendant himself, that the poison or noxious thing procured by him should be used to procure a miscarriage. Erle, L.C.J., made the following observations upon the point in question:—The question is (said his Lordship) whether or not the intention of any other person, besides the defendant himself, that the poison or noxious thing should be used to procure a miscarriage, is necessary to constitute the offence charged; and I believe we are all of opinion that that question must be answered in the negative. The statute is directed against the procuring or supplying of substances for the purpose of procuring abortion, with the intention that they shall be so employed, and knowing that it is intended that they shall be so employed. The defendant knew what his own intention was, and that it was, that the substance procured by him should be employed with intent to procure miscarriage. The case is, therefore, within the words of the Act. We confine our judgment to the question submitted to us.

We have already made some observations upon the mode of taking depositions before the magistrates at Liverpool, which was recently the subject of discussion in *Reg.* v. *W. W. Watts*, C. C. R., 12 W. R. 112. The Court there held that the statute 11 & 12 Vict. c. 42, s. 17, requires that the depositions there mentioned shall be taken in the presence of the justice and of the prisoner, and that the prisoner shall be at liberty to cross-examine the witnesses; and where those requirements had not been complied with depositions used as evidence for a prosecution were held bad and inadmissible.

In *Reg.* v. *Thomas and Willett*, C. C. R., 12 W. R. 108, the law of treasure trove was discussed with great learning on behalf of the Crown, but on behalf of the prisoner no counsel was instructed to appear, and the counsel who appeared for him at the trial was allowed, as *amicus curiæ* merely, to cite authorities for the information of the court. The main question in the case was, whether, in an indictment for concealing the finding of treasure trove from the knowledge of the Queen, it is necessary to allege that the prisoner has concealed it fraudulently, or it is sufficient to allege that he has concealed it unlawfully, wilfully, and knowingly.

On this point, Erle, C.J., made the following observations:—"I think that there is no law by which it is rendered essential to charge the prisoner with concealing the finding of the treasure *fraudulently*. The authorities show that the offence consists in the *fraudulosa occultatio;* but the authorities also show that by those words is meant a concealment without excuse, and that, in the earlier writers, they mean an unlawful and wilful concealment. The mine of authorities which has been cited satisfy us that it is by no means the essence of the offence that it shall be committed fraudulently. This is not like the case of an offence created by a statute, wherein, in defining the offence, the word "fraudulently" occurs, and is omitted in an indictment for the offence. As to the offence here, the law is clear. At one time treasure trove was a branch of the revenue. But now the Queen has the right to it; and the offence consists in concealing and hindering hidden treasure that has been found from coming to the Queen.

COURTS.

JUDGES' CHAMBERS.

(Before Mr. Justice SHEE).

Jan. 5.—*The Queen* v. *King, Heenan, and Others.*—Mr. *T. Beard*, the attorney on the part of King, who, as connected with Heenan, Sayers, John Tyler, Jerry Noon, John M'Donald, James Mace, and Robert Travers, in the late prize fight, was committed by the Wadhurst bench of magistrates for an alleged breach of the peace, to the Lewes Quarter Sessions, applied, on Saturday, to the learned judge for a writ of *certiorari* to remove the indictment into the Court of Queen's Bench, or to the next Spring Assizes. His Lordship reserved his decision until to-day.

In support of the application, Mr. *Beard* handed in an affidavit made by King, in which he made the following statement:—He was, on the 22nd of December, committed, with the other defendants, to take his trial at the sessions to be holden at Lewes on the 5th of January inst., but admitted to bail, on the complaint that he, Heenan, and the other defendants, with other persons, assembled and disturbed the public peace on the 10th of December. He had been advised, and believed, that he did not, on the occasion referred to, commit a breach of the peace. He believed that the justices who committed them would sit on the bench with other magistrates at the Quarter Sessions, and that, in consequence, his case would be prejudiced before the bench of magistrates on his trial. He had also been ad-

vised, and believed, that one or more points of law would arise on the indictments, which he wished should be argued before one of the learned judges of the superior courts, and he intended to apply for a special jury, and to engage, for his defence, one of her Majesty's counsel, or a serjeant learned in the law. The affidavit went on to state that the charge against him had been the subject of much discussion in the vicinity of the town in which he had to appear, and that great feeling had been displayed by the inhabitants, some of whom might be summoned on the jury; and, further, that the local journals had commented on the case, endeavouring to prejudice the same, and that one of the witnesses for the prosecution was a magistrate of the county. For these reasons, King alleged that he could not have a fair trial at the Quarter Sessions, and prayed that the indictment might be removed into the superior court. The application was made on behalf of himself and the other defendants, and was made with their sanction. His only object in making the application was to have a fair trial, and not for the purpose of delaying the trial of the indictment. Mr. Beard hoped the learned judge, on the affidavit he had produced, would grant a writ of *certiorari*, and thereby prevent the trial taking place in the county in which a prejudice had been created, and in which the local newspapers had commented on the case. He assured his Lordship that King, for whom he appeared, had no desire to delay the proceedings, but only to obtain a fair trial before a judge of one of the superior courts, either on the circuit or in the Court of Queen's Bench.

Mr. Justice SHEE said he should like to consider the matter before he gave his decision, and would carefully go over the affidavit.

His LORDSHIP now granted the application for the writ of *certiorari*, and the indictment will be shortly removed from the Sessions at Lewes, where it was appointed to be tried.

COURT OF BANKRUPTCY.

(Before Mr. Commissioner GOULBURN).

Jan. 1.—*In re Charles Newton.*—The bankrupt, a farmer, of Ramsey, Hunts, passed his examination and obtained an order of discharge upon accounts showing debts and liabilities £1,966; available assets, £70.

Mr. *E. Reed* was for the assignees.

The COMMISSIONER said, that in this case he felt bound to remark upon the absence of the trade assignee of the bankrupt's estate. It was the duty of the trade assignee to attend the sittings of the Court in order to give information with regard to the bankrupt's assets. He (the Commissioner) was informed by Mr. Stansfeld, the official assignee, that the whole of the property was realised before the meeting for choice; and the trade assignee had not, therefore, taken any active part in the proceedings. On this ground it was sought to excuse him. In the first instance he (the Commissioner) had been at a loss to understand why a trade assignee had been chosen at all. It had since been suggested to him that upon the appointment of a trade assignee the "costs" would be paid to the solicitor nominated by the trade assignee; but that, if no trade assignee had been chosen, the costs would have become payable to the solicitor for the official assignee. No doubt that was a very good reason for the appointment of a trade assignee, but whether it was right and proper, under the circumstances, was well worth consideration.

Mr. *C. E. Lewis.*—Many of us think it to be a very good reason. (A laugh.)

Order of discharge allowed accordingly.

SHERIFFS' COURT, RED LION-SQUARE.

Jan. 7.—During the hearing of a railway compensation case at this court to-day. Mr. J. Wilkinson, who appeared as counsel for the claimant, alluded to the discussion which was being carried on in the public press respecting the summary process which the railway companies possessed over landowners, and of which the latter complained. He thought that the subject was worthy of consideration, now that railways were spreading out into all the suburban districts. Mr. Lloyd, Q.C., for the railway company, objected to the matter being imported into the present case, with which it had nothing to do; and Mr. Sheriff Burchell said that unless it had reference to the case then under inquiry the discussion could not be continued.

GENERAL CORRESPONDENCE.

LAND-CREDIT COMPANIES.

In a review in a recent number of your journal of Mr. Alfred G. Henrique's pamphlet on the subject of land-credit companies, you state that rumours are afloat that a land-credit company will speedily be brought forward for England. I have heard some confirmations of these reports, and, possessing myself some experience in the operations of these companies, I now wish to direct your attention to some of the questions which land-credit companies allege they are competent to solve. Land-credit companies, in all aspects of their operation, must be considered from a two-fold point of view—viz., as lenders on mortgage and suppliers of capital;—in relation to landowners, and concerning their interests and their necessities; in other words, we should regard land-credit companies as well from the landowners' point of view as from that of the companies themselves. On the present occasion I desire to submit a few remarks considering land-credit companies solely as universal mortgagees.

At the present day many and serious difficulties occur in obtaining money by way of loan, upon the security of land. Theoretically this is *not* so, practically it is; and these difficulties appear far more prominently in cases of small loans on small properties than in larger transactions. An owner of thousands of acres, it is true, takes his title-deeds to his bankers, and asks for and readily obtains an advance of large sums of money on the security of his estates; but this facility results from two causes—first, the general credit of a possessor of large estates, if he hold his own deeds free from any lien, is rightly deemed of value sufficiently to justify a considerable loan; and, secondly, the titles to large estates possess a county recognition which is of itself of immense influence and value.

But a small proprietor is placed far differently, he possesses little or no general credit, and his banker (even if he have one) will be perfectly ignorant whether his title is good or bad; hence, as regards the anomalous transaction called "an equitable mortgage," the small landowner is in a position of difficulty in obtaining money by way of loan.

Now, directing our attention to cases of permanent investment on mortgage, we find the same relation of conditions—viz., less difficulty in obtaining large sums on mortgage than in obtaining smaller ones.

A large amount of trust money, and the ample funds of insurance and other companies, until lately sought permanent investment on mortgages of real estate, and the owner of five thousand acres formerly often obtained £100,000 with little trouble. But it cannot be doubted that the facility which did prevail is much decreased, and will still further diminish. Investments of great security, and with a higher rate of interest than that usually obtained upon land, together with much readier convertibility into money, are now much more frequently offered to the capitalist than heretofore. Trust money, and the funds of insurance companies, now find their way into East Indian securities, railway debentures, debenture stock, &c.; this diversion of capital, from its former flow, into investments on mortgages, will, before long, doubtless, operate so as greatly to impede the ability of obtaining money on the security of land.

With regard to the smaller capitalists, who formerly esteemed so highly the investment of a few hundred pounds on mortgage, an entire change has taken place; what was heretofore a desirable and favourite investment, is now sought by few. All the causes operating to diminish the flow of large sums into investment on mortgage act with vastly increased force in the case of more moderate sums. The smaller capitalists, besides desiring a higher rate of interest than that usually obtained upon land, require as essential to profitable investment, *rapid convertibility* (which no mortgage possesses); therefore, since the existence of the safe and secure investments before mentioned, very little capital has taken the direction of mortgages for small sums.

This fact is so well known in practitioners' offices, that, doubtless, there are few solicitors of late years who have not experienced and suffered from this inconvenience. These difficulties will be at once removed by the operations of land-credit companies. A land-credit company will offer itself as a lender of money, either in large sums or in small sums, either for long periods or for short periods. At all times, without delay, a land-credit company will be ready to supply capital to the land-owner on the security of his estates.

Those powerful commercial reasons for not *locking-up* money by investing on mortgage, cease when applied to the mortgages of these companies; for, as is explained in Mr. Henrique's pamphlet, the money so locked-up on mortgage is set free by the issue of the company's bonds, and thus the company again finds itself in possession of funds to lend on mortgage.

The land-credit company will, therefore, provide a species of bank, from which landowners can perpetually draw ready money secured upon their estates, and in the same manner that ordinary banks furnish to merchants commercial accommodation based upon their credit, so will land-credit companies provide to landowners that kind of accommodation which the nature of the property in land so often renders desirable, and even necessary.

The subject is, no doubt, one of interest to solicitors. The question for them is, how far the new movement is hostile to their professional business as conveyancers; or, assuming it to be so to some considerable extent, then, how far solicitors may avail themselves of this new phase of the joint stock principle, so as to educe good from evil. L. J.

Jan. 4.

On the Fusion of Law and Equity.

Having admitted into your columns* a paper read at the Leicester meeting of the Metropolitan and Provincial Law Association, by Mr. J. O. Watson, of Liverpool, containing some observations on a letter recently addressed by myself to the Lord Chancellor on the subject of fusion, I shall be glad if you will insert this letter in your journal in reply to Mr. Watson's observations, as I think he does not fully apprehend the important advantages which would flow from the reforms suggested in my letter.

In order fully to understand the present position of fusion, we must remember that it has been going on for a long time. It probably began with the Interpleader Act, 1 & 2 Will. 4 c. 58, and has since been greatly extended, so that, at the present time, courts of equity are required to decide all legal questions arising in equity suits properly instituted; and courts of law, in very many cases, have to decide equitable rights; and all that is now proposed is to complete the fusion which has been progressing so long, by giving, to all the courts, concurrent jurisdiction.

That there is occasion for this, I think, is well illustrated by the recent case of *Smith* v. *Levaux*, 12 W.R. 31. That was a suit by an agent against his principals, the defendants, who had agreed to give the plaintiff a commission on everything they sold to any person introduced to them by him; and, as he could not possibly know anything about the orders of the persons so introduced, he brought his suit for an account, and for the commission. V. C. Wood gave him a decree, but the Lords Justices reversed it, and dismissed the plaintiff's bill, *with costs*, except as to the costs of the appeal, on the ground that the plaintiff's remedy was at law. That such a case could now possibly occur, shows, I think, that fusion is necessary; and this illustration also answers two of Mr. Watson's observations. He says, first, that if concurrent jurisdiction were given to our courts of law and equity, the amount of litigation would be the same; and, secondly, that the expense would not be diminished. These propositions I deny, as all the litigation in the courts, as to jurisdiction, would cease, and the expenses of such litigation would also cease. Again, as to the expenses, if concurrent jurisdiction were established, a uniformity of courts, and of practice, must speedily follow, and this would, I think, prove a great saving to the suitor.

Any one accustomed to the practice of courts of law and also of courts of equity, cannot, I think, doubt for a moment but that if this uniformity of jurisdiction were established, the common law practice as to the trial of contested issues of fact on circuit, near to the residence of the parties and their witnesses, by *viva voce* testimony, would in all cases be adopted, and all the expense of depositions and affidavits would be avoided. The present system of evidence, so far as it relates to *viva voce* testimony before the Court of Chancery in London, as to facts which may have to be proved by witnesses resident in Wales or Durham, or elsewhere, may, in many cases, prove a denial of justice merely because the parties cannot afford the expense of the production of the witnesses in London. In the recent case of *Williams* v. *Williams*, 12 W. R. 140, the defendant's counsel stated at the hearing that the defendant was prevented from cross-examining the plaintiff's witnesses, in consequence of the expense of bringing them to town. Whether it is right that either side should have to pay in the first instance the costs of the production of the witnesses on the other side for cross-examination will, I think, admit of great doubt; if so, certainly such cross-examination ought to be, if possible, in the county where the witnesses live.

Mr. Watson's observations on the Judges and the Bar are, I think, easily answered. Both law and equity are now administered in all the courts; all the Judges and the Bar are, or ought to be, familiar with both.

Mr. Watson does not apprehend accurately the section of my proposed Act of Parliament, wherein I propose a division of business amongst the different courts; it has no necessary connection with the question of jurisdiction, but has reference to the division of labour for the convenience of the courts and their officers. A similar power already exists in equity, and it would be very useful with regard to *Nisi Prius*; for instance, at the last sittings of the Court of Exchequer, at Westminster, *five* days were entirely lost, as it had exhausted its cause list, and there was no power to transfer causes from the other courts.

As to the section wherein I propose that a suitor in equity shall have power to appeal to the Exchequer Chamber, and that the Master of the Rolls and the three Vice-Chancellors shall form part of the Exchequer Chamber, I think the suitor has a right to require as good an appeal court on a question of law decided in an equity court, as he has at law; and, as to the observation that the Court of Exchequer Chamber would be quite inadequate to the hearing of the appeals, I think that this would not be found to be so in practice; the proposed appeal would be optional, and would probably be only exercised where a question of law arises, which, under the old system would have been sent from equity to law.

And now, as to the construction of the courts, which is the best, law or equity? Let them be tested by the reported cases on appeal—and I do not know what better test a practitioner can take—and I think it will appear, as is, indeed, reasonable, that the common law courts of four judges are very superior to the equity court of one judge. I have gone through the appeals reported in the *Law Journal*, 1863, and the result is as follows:—Fifty-six appeals from the judgments of the Master of the Rolls and the three Vice-Chancellors to the Lord Chancellor and Lords Justices, and of these, twenty-nine were affirmed and twenty-seven reversed; whereas there were thirty appeals from the judgments of the courts of law to the Exchequer Chamber, and of these, twenty-four were affirmed, and only six reversed. The result would seem to be, that, in equity, it appears to be about an even chance whether the decision appealed from is accurate or not; whereas, at law, one case only in five is inaccurate.

Such a result is somewhat *startling*, having regard to the risk of costs which an appellant runs, and to the costs actually incurred in every appeal, and having, also, regard to the probable inaccuracy or accuracy of the decisions which are not appealed from; which makes it a matter of anxiety to ascertain whether the result would be mitigated by extending the comparison beyond 1863, as that year might possibly have been an exceptional year. I have gone through 1861 and 1862, and with the following results:—

Appeals in Equity from the Master of the Rolls and the three Vice-Chancellors.

	Affirmed.	Reversed.	Total.
1861	34	29	63
1862	20	29	49
1863	29	27	56
Total for three years	83	85	168

Appeals at Law to Exchequer Chamber.

	Affirmed.	Reversed.	Total.
1861	19	4	23
1862	28	12	40
1863	24	6	30
Total for three years	71	22	93

The general result is, that it is rather more than an *even chance* in equity in favour of the reversal of the decision appealed from, whereas at law not quite *one* case in every *four* is reversed. Does not such a result establish a good reason why the courts of equity should be made uniform with the courts of law by an addition to their judicial strength? If three, or, at the least, two puisne judges were added to each branch of the equity courts, I think no one can doubt but that their decisions would be much better supported on appeal. And when all the issues in fact in the chancery court in country cases are tried on circuit, these additional judges will be very useful on circuit, and will facilitate an entire re-arrangement of the circuits.

I trust that the discussion of this subject will soon lead to the adoption of concurrent jurisdiction and an uniformity of courts and of process. James Jones Aston.

4, Middle Temple-lane, Jan. 2.

* Ante p. 135.

Chorley v. Walton.

I have read in the *Solicitors' Journal*, of Jan. 2, 1864, the communication in it (p. 162), headed "The Libels against Mr. T. F. Chorley," and report of the case (p. 161). I presume it is my duty, as a member of the general business community, and as a man of acknowledged respectability, to notice Mr. Chorley's statement, leaving to your sense of *duty to the public* to do with my explanation as you may think proper. I have carefully read over the communication in question, and I have to say, that I do not find truth in one sentiment or expression of it, but misrepresentation from beginning to end. Even the alleged "apology" is misstated. The word "deep" before "regret" was, by agreement of counsel, struck out of it before I would consent to settle the case, by granting to the plaintiff such an "ample" satisfaction as the words import. It was further distinctly agreed by counsel, as the clerk of the court can witness, that the form of the settlement was "not" to be deemed an "apology." I observe, sir, that your report of the case (p. 161), also contains the insertion of the word "deep" before "regret," which, I conclude, was done by yourself, in consequence of seeing the word inserted in the communication above mentioned.

The report itself is a popular condensation for the daily journals, but a very imperfect representation of what was said and done. The cross-examination, and the magistrate's grave rebuke of the plaintiff on his contradictory statements on oath, and other matters, are wholly omitted. Moreover, the case was all *ex parte*, when the counsel, wearied enough, succeeded in obtaining from me the concession, based, as they showed me, upon the plaintiff's denial upon oath of the truth of the honest indignant reproaches (not "scurrilous abuse"), of my alleged libellous letter to him. But I believe Mr. Morris, of Messrs. Ashurst & Co., to whom Mr. T. F. Chorley refers, in his allusions to the Queen's Bench and the Law Society, has a verbatim report of this case. The alleged libelous matter *was* read *in extenso*, and so became public property. What the plaintiff took by his motion in this Guildhall adventure may be better understood by your professional readers than by myself.

Christopher Walton,
24, Ludgate-street, City. Goldsmith.

Answers to Questions at Incorporated Law Institution Examinations.

It has often occurred to me that sufficient space in your journal is not allotted to matters immediately affecting articled clerks, a body which I venture to think constitutes a very large proportion of your attentive readers.

The ostensible object of the *Solicitors' Journal* is to furnish legal information to all the various grades of members of our branch of the profession, and not to associate itself solely with any particular class: the lowest as well as the highest should have his wants satisfied; we, who are commencing the journey of legal life, need sustenance by the way as well as they who have nearly completed their honourable pilgrimage. But, whilst I would plead for a more liberal measure of rations for the nourishment of our expanding frames, it will not be necessary for me to call for the curtailment of the abundant supplies which you dole out to our seniors, who were nurtured during their curriculum, and have now attained full development. Without interfering with their vested rights, for whose interests, and by whose support, the paper is mainly established, I would indicate a plan for the advancement of our interests. The particular in which articled clerks have been most desirous for a new development of the *Solicitors' Journal*, is non-publication of answers to the questions put to candidates at their final examination, a subject upon which they feel the liveliest interest. It is with eager avidity that hard-working law students who aspire to the attainment of honours, read the questions put at each examination, from them they form a general idea of the class of questions that will be put when their time arrives, and thence frame their course of future reading. Thus men will yet at the questions, and, by reason of the non-publication of them in your paper, are obliged to procure one of the periodicals containing them, issued shortly after the examination. However hard a man may read, this alone will not secure him a prize, or even safely take him through the examination; he must, by example and practice, acquire an original mode of replying to questions. The pamphlets before referred to, as a rule, are not models of style—their answers bear the impress of modest timidity, of a reluctance on the part of the writers to rely upon their own expressions; they, therefore, copy long extracts from text-books or statutes, which, in their isolated form, are often meaningless, and which, together with the context, the student has, perhaps, frequently perused in its proper place; thus, the great end of the method of instruction by question and answer is defeated, which is to furnish a pattern of appropriate replies, so woven into the texture of the question, as to form one with it. The matter of the answer should be conveyed in so original a manner as to convince the examiners that the student is giving expression to information which is incorporated into his stock of permanent knowledge, and not the evanescent recollection of the exact words of a portion of a condensed manual. When the examination arrives, the student will have to answer for himself, according to his own idea of what is the best; but whilst he is *in statu pupillari*, if, by publishing answers to the final examination questions, you would give us your ideas of the style of answering we should cultivate, the articled clerks of England and Wales would be under obligations to you which have not heretofore been imposed.

Studens.
Jan. 4.

Declaration preventing Dower.

The reasons adduced by your correspondent, "Charles E. Paley," in his letter, published in last week's *Solicitors' Journal*, do not seem to me to be very cogent.

He cites the observation in Jarm. & Byth. Conv., vol. 9. p. 75, that the declaration "excludes the very perplexing questions that may arise on the 9th section of the Dower Act, as to what is a devise of an estate or interest in land sufficient to exclude the wife's dower?" but this observation is, I think, sufficiently answered by Mr. Herbert Lewis, in his "Principles of Conveyancing," p. 183, where, in the course of an excellent review of the question, he says, "Such difficulty is easily avoided by expressly declaring by the *will* that the dower shall be barred; whilst, with the declaration in the *conveyance*, the purchaser's purpose might be defeated, if he were to devise those lands to his widow under the impression that he was thereby providing for her, and that the rest of his lands would be enjoyed free from her dower; for, by the 9th section, the devise of lands to the widow, will only bar her dower (in her husbands other lands), if they (*i.e.*, the lands devised), are themselves such of which she is dowable."

But, if authorities are to be appealed to, I think I can show that they are in favour of the view which I take of the question, thus:—

Lord St. Leonards' (Sug. V. & P. 14th ed. p. 458) says, "A declaration barring a purchaser's wife of dower should not now be inserted in a conveyance to him *without special instructions*." He cites two cases, showing that the Court of Chancery will not allow the insertion of the declaration in conveyances under the Trustee Act, 1850.

Mr. Dart (V. & P. 3rd ed. p. 350) says, "The common practice is for the draftsman to exclude the wife's dower, although he may have no special instructions to that effect; but this is scarcely defensible."

Mr. Davidson (Prec. in Conv. Vol. 1, 3rd ed. p. 188), says, "As the dower of a woman, married since 1st January, 1834, is defeasible by the husband's conveyance or will, it takes effect only in the case of his dying seized and intetsate, in which case it is generally highly desirable that the wife should be dowable against her heir-at-law," and he accordingly omits the declaration in his precedents.

I may also remark that Mr. Sweet, although he gives the reason above quoted in favour of the insertion of the clause, seems by no means certain of the wisdom of retaining it, as may be seen by reading the whole of the note in which the above passage occurs.

I do not agree with Mr. Paley that it is a common notion that a man's lands descend on intestacy to his heir, unincumbered by the widow's dower; on the contrary, I believe that the right to dower is as well known as the law of descent, and that most men expect that, if they die intestate, their real property will be subject to their wife's claim to dower; and, indeed, it is one of my reasons for urging the discontinuance of the practice of inserting the declaration, that its effect is to alter (without the purchaser's knowledge) what he would, if appealed to, declare to be the *natural* devolution of the interest in the property, in case he should die intestate as to it.

Reformator.
Liverpool, Jan. 5.

COMPENSATION CASES UNDER THE LANDS CLAUSES ACT.

The following letters on this subject have been addressed to the *Times*:—

As none of your correspondents have given your readers any idea of the possible amount of a surveyor's charge for seeking compensation from a railway company, I write to say that I have in my possession a "little account" lately rendered by a London surveyor to a poor, illiterate Welshman, who was unfortunate enough to be the owner of the equity of redemption in a piece of land required for the purposes of a certain railway. This account contains far heavier charges for "attendances" than are ever allowed to solicitors, and it amounts, in the whole, to £123 9s. 9d. When I say that the sum voluntarily paid by the company for the land in question did not exceed £1,100, and that the surveyor would have been more than liberally remunerated by a charge of two and-a-half per cent. on that sum, such of your readers as may require the services of a surveyor will agree with "A Sufferer" that it is high time "there should be a regulated scale of charges for surveyors as for solicitors, and that there should be a provision for taxing their bills." It may interest and forewarn those among your readers who have received the usual Parliamentary notices to know that the claimant was recommended to the surveyor in question by the chairman of a railway company.

Oswestry, Jan. 5. A SOLICITOR.

I quite concur in the remarks of your correspondent as to the necessity of some protective measures for landowners against the very arbitrary proceedings of powerful railway companies, and give you the following instance, which I believe is of daily occurrence:—

A railway recently required to pass through my land, and gave me the ordinary notice to treat. We could not agree as to price, and I insisted upon having a jury to assess the amount to be paid to me, whereby I was put to very great legal expenses. The jury gave more than double what the company had offered, and I was under the delusion they would have to pay all the expenses. The bill of costs amounted to more than £400. The actual money paid by the solicitors to counsel and surveyors, &c., as proved before the taxing master by affidavit and production of vouchers, and not disputed by the company, amounted to £285; the bill, as taxed by the master, and to be paid by the company, was £265 6s. 10d., leaving the balance to be paid by myself. These facts require no comment from,

A LANDOWNER.

RIGHT OF WIFE TO FURNITURE PURCHASED OUT OF HER SEPARATE ESTATE.

I should be obliged to any of your correspondents who would advise me in the following matter:—

A testator, by his will dated in 1855, bequeathed to his daughter Jane, the wife of A. B., the sum of £2,000 sterling to and for her own absolute use and benefit, to be by her enjoyed independantly of her present or any future husband, and the same was not to be subject to his or their debts, control, or engagements, and her receipt only was to be a good discharge for the same.

Testator died in 1858, and the legacy of £2,000 was paid by his executor to his daughter, upon her receipt alone, and she invested the money on mortgage in her own name immediately upon receipt thereof, and has ever since received the interest thereof and applied it to her own use, her husband never having interfered with it in any way.

The daughter has purchased furniture at different times for the use of her household, which cost her altogether one hundred pounds—this money was derived from her savings out of the interest of her said mortgage. She always considered, and so did her husband, that this furniture was her own exclusively.

In 1863, her husband was declared a bankrupt, and his assignees under the bankruptcy admit the above stated facts, but claim the said furniture, contending that it all passed to them under section 125 of 12 & 13 Vict. c. 106, "if any bankrupt, at the time he becomes bankrupt, shall, by the consent and permission of the true owner thereof, have in his possession, order, or disposition any goods or chattels whereof he was reputed owner, the Court shall have power to order the same to be sold for the benefit of the creditors."

I have advised that the furniture did *not* pass to the assignees, but remains in the wife, considering that the section does not apply where the bankrupt is in possession, as in this case, as a trustee (*Mace* v. *Cadell*, Cowp. 232; *Whitfield* v. *Brand*, 16 M. & W. 282.)

Section 130 of the said Act enacts that if any bankrupt shall as *trustee* be seized or possessed of any real or *personal* estate, the Chancellor may order the same to be transferred to such person as he shall think fit.

The two cases of *Harvey* v. *Harvey*, 1 P. Wms. 125, and *Bennett* v. *Davies*, 2 P. Wms. 316, decide that when no trustee is appointed, the husband shall be a trustee for the wife.

Gore v. *Knight*, 2 Ver. 535 (the ruling case), decides that as the married woman had power over the principal, she consequently had it over the produce of it, "for the *sprout* is to savour of the *root* and go the same way." This case was approved of by the Master of the Rolls, in *Humphery* v. *Richards*, 2 Jur. N. S. 432. H. P.

APPOINTMENTS.

The following appointments have been made in the East Indies:—

Mr. F. J. COCKBURN has been appointed to officiate as civil and sessions judge of Beerbhoom. Mr. A. SMITH has been appointed to be joint magistrate and deputy collector of Midnapore. Mr. W. CORNELL has been appointed to be joint magistrate and deputy collector of Mymensing. Mr. G. L. T. HARRIS has been appointed to officiate as joint magistrate and deputy collector of Buckergunge. Mr. N. H. THOMPSON has been appointed to officiate as first judge of the Court of Small Causes, Calcutta. Mr. B. F. HALL, officiating joint magistrate and deputy collector at Banda, N.W.P., has been appointed a joint magistrate and deputy collector of the first grade. Mr. L. S. SAUNDERS, officiating judge of Small Cause Court, Lahore, has been appointed to officiate as personal assistant to the judicial commissioner. Mr. G. R. Elsmie, assistant commissioner, Rawul Pindee, has been appointed to officiate as judge of Small Cause Court, Lahore.

PROVINCES.

APPLEBY.—At the Epiphany Quarter Sessions of the peace for the county of Westmoreland, opened in this town on Monday, the chairman announced the gratifying fact that the calendar was blank. There was not a single prisoner for trial. He complimented the county upon this immunity from crime, even in the hardest times.

DERBYSHIRE COUNTY SESSIONS, Jan. 5.—THE RESPITE OF TOWNLEY.—Mr. *J. G. Campton* rose to ask Mr. Mundy, M.P., whether he, as chairman of the visiting justices of the Derby County Gaol, had had his attention called to certain circumstances which had recently taken place within its precincts, and whether he was aware that a certain commission, composed of borough magistrates, had sat for the purpose of inquiring into the state of mind of the convict Townley? He believed that the report of that commission had led to an event which was deeply deplored throughout the country, and he quoted an authoritative paragraph from *The Times* of last Thursday in support of his assertion—that the certificate signed by those justices had materially influenced Sir George Grey in his decision. He would not say that it had been entirely instrumental in obtaining the escape of Townley, because it was well known that another and higher commission had sat, with a view to ascertain the state of mind of this unhappy man, but it evidently had had an effect. He noticed in another paper, usually supposed to be the ministerial organ—the *Globe*, an article evidently written for the purpose of exculpating the Home Secretary, and stating that the respite of Townley was a purely administrative act, and that he only acted according to the directions of the justices who signed the certificate of lunacy. This had led to a result which, as he had before said, was deeply to be deplored. The Act of Parliament had been made use of by those interested in the defence of Townley to introduce into the gaol a commission, formed of certain justices who had previously formed and expressed an opinion upon the case which they were to investigate, and he need not say that it was highly important to the community that such investigations should be conducted by persons who are perfectly unbiassed. He found that these magistrates had previously, one and all, signed a memorial stating it to be their opinion that the convict was insane, and praying Sir George Grey to send a commission to inquire into the state of his mind. These were the gentlemen who were called in to give the country an unbiassed opinion upon a case of this importance. Two medical men had assisted them in arriving at this opinion. One of them is the partner of another medical gentleman in Derby, who gave most powerful evidence in favour of the

prisoner, and who holds the office of surgeon to the gaol, and who himself had previously signed this petition. With regard to the other surgeon, it would be only necessary to remark that he, too, had signed the same document. In such a case as this, the public are entitled to be made thoroughly acquainted with all the facts of the case, and they have a right to demand that such a commission should be properly selected. It ought to have gone through its proper channel—that of the visiting justices. He greatly feared that this deviation from the proper course had led to a signal failure of justice, and he believed that it was generally considered that this was actually the case. It gave just grounds for a suspicion on the part of the general public that the rich man does not reap the same punishment for his crimes as the poor man does, and that such an idea should gain ground was much to be lamented. He thought that any act which they, as a body of magistrates, could do in order to manifest their disapproval of the present very unsatisfactory state of things ought to be done. A murder had been committed, and the murderer had been tried in open court, found guilty, and sentenced to death. The jury, by their verdict, declared themselves satisfied with the evidence as to the prisoner's responsibility, the judge declared himself satisfied with that verdict, and after all that a secret tribunal was sent down by the Home-office to report as to the prisoner's sanity. He called the attention of the Court to a remonstrance which had been framed, which the Clerk of the Peace would read.

Mr. Barber then read as follows:—

"To the Right Hon. Sir George Grey, M.P., Her Majesty's Principal Secretary of State for the Home Department.

"Derby, Jan. 5.

"Sir,—We, the undersigned magistrates of the county of Derby, beg to represent to you that, in our judgment, shared largely by the public, the circumstances under which George Victor Townley (who, at the late assizes for this county, was convicted of and condemned for the murder of Miss Goodwin) has been respited, on the allegation of his insanity, ought to be fully and publicly inquired into.

"It appears by his own undisputed voluntary statement immediately after the murder that he committed the act deliberately, with full knowledge that he was thereby violating the law, and that he had thereby rendered himself liable to be, and expected to be, capitally punished; he declared to Captain Goodwin that the woman who had deceived him must die; he alleged that Miss Goodwin did deceive him, and he put her to death. It was not the blind and furious impulse of a madman, but a deliberate act, which manifested the exercise of reason in his endeavour to prevail with Miss Goodwin, but, failing in his object, the spirit of revenge, which was satiated by her death. His family treated him as sane. Neither the surgeon nor the governer of the gaol reported him to be insane, as it was their duty to do if they had so considered him.

"The learned judge stated that, if the defence of insanity set up for him at the trial was to prevail, it would be dangerous to society.

"It is alleged that he has since become insane. A commission was sent down by you to inquire into his sanity; subsequently to the inquiry by those commissioners, the prisoner's professional adviser caused another inquiry to be made by two magistrates, aided by two medical men. The value of that inquiry can only be estimated by a full and open investigation into its origin and conduct. This appears to us to be called for.

"The result of these private proceedings has been a respite of the prisoner, and an order for his removal to a lunatic asylum. The effect has been to cause much dissatisfaction, to create a feeling greatly to be lamented—that there is one law for the rich, and another for the poor; that justice has been turned aside by the power of money; and that if Townley and his friends had been poor he would have been executed, as a man named Thorley was in this county last year, for a murder under like circumstances.

"The inquiry by the commissioners is open to grave objections. It is one-sided. Townley's professional advisers and friends have acted with all the energy and effort which money produces. The prosecution has not been heard, nor the public interest adequately represented in the inquiry. It was private.

"The witnesses were, we believe, not sworn. No opportunity was afforded to the prosecution of cross-examining them, and they knew it would be so; nor of contradicting or explaining their testimony or opinion by other evidence.

"In this and other like cases the prisoner has been tried by a judge and jury, acting under the sanction of an oath, aided by counsel employed on both sides, witnesses examined and cross-examined, all in open court. We think that respect for trial by jury, and confidence in the pure administration of justice, will be seriously weakened if a verdict and sentence following such a fair and solemn trial may, in this or any other criminal case, be interfered with by any inquiry less public and complete than the trial itself.

"We therefore most respectfully trust, also most earnestly urge upon you, the necessity and propriety of abstaining to act upon this private and *ex parte* information, and of causing a full inquiry to be made into the matters referred to by some responsible authority, and in as public, fair, and complete a manner as criminal trials are conducted.

"We have the honour to be, Sir,

"Your most obedient servants."

(Signed by upwards of forty magistrates).

Mr. Mundy said that he was glad that Mr. Crompton had given him an opportunity of explaining the part he had taken in this matter. The visiting justices felt agrieved and much surprised that they were not informed by the surgeon of the gaol when he changed his mind upon the subject of the prisoner Townley's sanity or insanity, he having given evidence that he considered the prisoner to be insane, although he had previously given his opinion that he was perfectly sane. The justices had caused a minute to be entered to that effect. As chairman of the visiting justices, he had been applied to by Townley's friends to allow them to see him, and he could not refuse so natural a request. On the day after Christmas-day he received a request from the prisoner's solicitor to allow certain persons to examine him, with a view to induce the Home-office to send down a commission in lunacy. Upon returning, after a short absence, he was surprised to find that that commission had already arrived, so that Mr. Sims very properly refused to allow any other interview until those investigations were concluded. They had every opportunity of making those investigations afforded to them, and of satisfying themselves as to his condition. After this it would seem that the visit of the other justices was uncalled for and unnecessary, but, nevertheless, they did see him. On Tuesday the prisoner's solicitor came to the gaol to ask permission for the other commission to see the prisoner, and Mr. Sims referred him to the chairman (Mr. Evans), and leave was granted. It seemed to him (Mr. Munday) that his visit was entirely a work of supererogation, and, after the report of the other commission, it appeared perfectly unnecessary for any local gentlemen to have any interviews with the prisoner, the regularly formed commission having superior authority.

The Chairman said there was a doubt whether the power of giving a certificate was in the county or the borough justices, and, therefore, both had been represented.

Dr. Heygate, M.D., F.R.S., said, as this painful case had been brought before the Court, he felt it his duty to say that never during the whole course of his life, had he known a case in which a plea of insanity had been set up or maintained on such flimsy pretexts. There was no doubt that the power of giving a certificate lay with the visiting justices and not the the borough justices. A more monstrous thing he never knew in his life, than the way in which justice had been caused to miscarry throughout the whole case.

Mr. Crompton said, of course the solicitor of the prisoner was justified in taking such steps, in the interest of his client, as seemed good to him, and no blame attached to him; but it seemed that the borough justices had been made use of in order to violate the spirit of the Act 3 & 4 Vict. c. 54, an Act which which had been carried out in Derby, before, by responsible persons. In this case, the solicitor for the defence had introduced into the gaol a commission composed of persons who had everyone committed themselves to an opinion by signing a document in which that opinion was expressed. He considered that such a procedure was unfair, not only to the public, but to Sir George Grey, who formed his conclusions from it. Let the public be satisfied that the man was insane, for at present he was considered to be sane.

Mr. T. O. Bateman wished to know whether the gaol was it the county or the borough. He thought that the borough justices were right in interfering if the gaol was in the borough.

Mr. R. B. Barrow thought Mr. Compton's remarks were much too strong. He could not believe that money could weigh at all in such a case. As to the Home Secretary's power, if a certificate of insanity went to him, signed by two justices, he was bound to respite the prisoner.

Mr. Crompton said that the prisoner was represented by an active and able solicitor, but who represented the public?

A pressure had been put upon the jury, which was, to say the least, unfair to the interests of society. They were worked upon by being told that they had satisfied justice by their verdict, but that the prerogative of mercy was theirs, and it was hard to refuse to sign a memorial when put to them in such a manner. He did not hesitate to say that the public was injured by these secret tribunals. The case had been most amply investigated in open court, with the advantage of counsel on both sides, but the after evidence had been given without any person being present to represent the prosecution and to cross-examine those witnesses. If the Home Secretary was to be influenced by a tribunal, let it at least be a proper one.

Mr. BATEMAN.—It was stated in the papers that the magistrates who signed the certificate were Mr. Roe, the Mayor of Derby, Mr. Cox, and Mr. Forman.

Mr. CROMPTON.—I name no names; I merely say that as for Townley, money has saved him, and I move that the remonstrance be adopted.

Mr. R. W. M. NESFIELD.—I second that, although it might have been made a little stronger, showing from the evidence that the murderer had duly exercised his reason. Mr. Nesfield pointed out the facts to which he alluded, and concluded—My own opinion is, that if Townley is let off then Thorley was judicially murdered.

The CHAIRMAN put the question whether the remonstrance be adopted, and it was carried unanimously.

READING.—At the Berkshire quarter sessions, held on Monday at the Assize Courts, Reading, present Mr. R. Benyon, M.P. (in the chair), the Earl of Abingdon, Sir G. Sowyer, Bart., M.P., Hon. P. P. Bouverie, M.P., Right Hon. J. R. Mowbray, M.P., Mr. S. Beale, M.P., Mr. C. D. Griffith, M.P., Sir Paul Hunter, Bart., Hon. G. Barrington, Colonel Loyd Lindsay, and other justices, Mr. W. Merry introduced a motion that, with a view to general county convenience and economy, the two quarter sessions, now appointed to be held at Abingdon, be held in future at Reading. The Right Hon. Sir W. G. Hayter, M.P., seconded the motion, and gave some statistical particulars with the view of showing that by the removal of the sessions to Reading there would not only be more convenience experienced by the magistrates, but also by all who were called as jurors, witnesses, &c. Mr. Norris, M.P. for Abingdon, moved as an amendment that a committee be appointed to inquire and report generally as to the inconvenience and otherwise that would arise to jurors and others in the lower part of the county if the Court should order the sessions now held at Abingdon to be held at Reading; and also if it would effect any saving in expense. Mr. Bros, recorder of Abingdon, seconded the amendment, which was put and negatived. Mr. Crutchley then moved that the magistrates do meet on the first day of every sessions at Reading for the transaction of civil business, and adjourn the court to Abingdon for the trial of prisoners and other judicial business at Midsummer and Michaelmas. Mr. Bros seconded this motion, which was also negatived; and, after some remarks from Lord Overstone, who asked the Court to pause before they made the proposed change, the original motion was put and carried by 27 to 19.

TRURO.—At the Cornwall Quarter Sessions, on Tuesday last, it was resolved that petty sessional divisions should be made the basis of the new highway districts throughout the county.

WARWICK.—At the Warwick Borough sessions on Wednesday, the Recorder, Sir J. E. E. Wilmot, Bart., in the course of his address to the grand jury, referred to the case of Townley, and said he for one could not but express his own opinion, formed by what he read of the trial, and the whole facts of the case, that Townley was insane, not only at the time of his trial, but that he was also insane when he committed the murder. In such a case, all the advantages arising from example would be lost, and the deterrent effects destroyed. The Lord Chief Justice Hale had said of such *furiosus sole furor punitur*, which signified that the madman was sufficiently punished by his own malady, and the Secretary of State had directed his removal to a place of confinement. That case appeared to him (Sir J. Wilmot), to demand that a revision of the law should be made, in order that the inconsistencies and uncertainties attending capital convictions might be for ever done away with. Because, if the man was insane when he took his trial, then he ought never to have been put upon his trial for the charge. To alter the present state of things, and remove the evil so loudly complained of, he thought that the following particulars must be observed:—The question of sanity or insanity should always be raised before the prisoner was put upon his trial, and in no case afterwards. The exception to this would be in those cases where a man committed murder at a time when he was insane, but on trial manifested the usual marks of sanity. He thought that if the two safeguards he had mentioned were embodied and made law, the country would be much benefited. But they would only apply to such cases; the plea of insanity was set up as a defence. There were other cases of murder for which special provision ought to be made. In the cases of Dr. Smethurst and Jessie M'Laughlan the question of insanity was not raised at all; still it was necessary to have a criminal court of appeal for them. The Recorder concluded his observations by stating that, three years ago, he and Sir Fitzroy Kelly prepared a measure for the House of Commons for cases of criminal appeal; but that same session Mr. M'Mahon forestalled them by introducing a bill with a venue precisely similar. That measure was defeated. The rules of the House would not permit the introduction of another Bill that session, and in that way the subject dropped; but he hoped that in the next session something would be done in the matter by Parliament.

IRELAND.

The Admiralty Court resumed its sittings on Tuesday, the 5th instant, when the salvage case of the East Indiaman *Sebastian* was resumed for another salvagor. The vessel had lost her rudder, and was towed for some days by one vessel, which abandoning her from stress of weather, the *European* steamer came up, took her in tow, and landed her safely at Waterford. The case closed yesterday in all its parts, after having been at hearing nine days, and judgment is reserved until Tuesday next, the second day of Hilary Term. Sir Thomas Staples, Q.C., the last survivor of the Irish Parliament, was engaged in the case, and spoke with a clearness and vigour quite astonishing for a man bordering on ninety. The Bankruptcy Court remained open during vacation. The Fishery Commissioners are holding their sittings down in Munster, "confiscating," as the owners describe it, all the property in weirs on navigable rivers. They ordered the weirs of fourteen miles of river belonging to Colonel Vandeleur to be removed. Serjeants Sullivan, Armstrong, and others, have been brought down to defend the rights of property in the rivers; but the commissioners deal inexorably with them when satisfied the weirs obstruct the navigation. There will be an immense crop of litigation in these cases in the Queen's Bench next term by way of appeals.

At a meeting held in Thomastown, on the 30th of December, for the purpose of congratulating Mr. Justice Shee on his elevation to the judicial bench, the following address was resolved on and numerously signed, Mr. Blake being deputed to forward it:—"We, the inhabitants of Thomastown and its vicinity, wish to offer our warm congratulations on your well deserved elevation to the English bench. In so doing we particularly participate in your just pride at gaining so high a position, regarding you not only as our countryman, but also as being connected with us for so many years, socially and politically. It is impossible, in the narrow limits of an address, to express all we desire of the talent, worth, and high character for which you have been so long distinguished; we can only add our earnest hope that you may live for many years to enjoy the honours you have so well earned."

The annexed is the reply of the learned judge:—

"5, Sussex-place, Hyde Park, 1st Jan. 1864.

"My Dear Blake—I was most agreeably surprised last night by the New Year's gift which you forwarded to me from my fellow-parishioners of Thomastown. Have the goodness to present to Father Kealy, the Rev. Mr. Carleton, and the other good men and tried friends whose signatures for themselves and neighbours I am proud to see to the address, my warmest and heartiest acknowledgments. It is a great happiness to be thus congratulated on my elevation by those whose kindness to myself and my family is of long standing, and who have had so much better opportunities than any others of appreciating in success and defeat my character, motives, and conduct. I need scarcely add that they could not have selected, for conveying to me this very gratifying testimonial, one from whose hands it could be more acceptable than from yours.—Believe me, my dear Blake, very sincerely yours, WM. SHEE.

"James S. Blake."

FOREIGN TRIBUNALS & JURISPRUDENCE.

FRANCE.

A Paris correspondent of the *Globe* states that a circular has been issued from the French Home Office to the mayors, respecting the civil ceremony of French marriages, at the performance of which it is henceforth prescribed that candidates shall be called on to declare whether they are first cousins, a note of which consanguinity is to figure on the register. He also states that a law suit of an odd character is announced from Chalons in *Journal de la Saone*. A young lady known to be slightly lame was sought in marriage by an aspirant, who did not attach much consequence to such a trivial defect in an otherwise attractive and accomplished bride; but after the nuptial knot had been duly tied it was discovered that the limb was artificial, like that of Tom Hood's heroine, Miss Kilmansegg, and the husband declared off, notwithstanding an offer of double dowry from his father-in-law. The case is set down for trial before the local court.

AMERICA.

Mr. Edwin James.

A New York correspondent of a morning journal states that W. J. Florence is a clever actor. His *Ticket-of-leave* has coined him money for some weeks. He has brought out Edwin James in the following grand endorsement:—

"Washington Place, New York, Dec. 10, 1863.

"Dear Mr. Florence,—The performance of the 'Ticket-of-Leave Man' at the Winter Garden has afforded me much gratification.

"To enlist public sentiment on behalf of the man who has been tempted into the commission of crime to prove that within the walls of a prison penitence and reformation are not impossible—to afford him the fair opportunity of a brighter and happier future, was the object of the author in the construction of this drama.

"I had the pleasure of his acquaintance, and have conversed with him much upon this subject. He would be pleased with the manner in which the effort of his genius is embodied by your very natural and forcible repreesntation of the principal character.

"England has borrowed much of her system of prison discipline from the United States; we might, I think, with advantage to the criminal, and without any injury to society, adopt a course which would afford some prospect of retrieving character, and allow a ray of hope to shine into the dark dungeon of the penitent and reformed convict.—Yours, faithfully,

"Edwin James.

"To W. J. Florence, &c., Winter Garden."

Legal Tender.

Justice Wayne, of the Federal Supreme Court at Washington, has declared that that Court has not the power to reverse the decision of the State Court of New York in the case of Judge Rosevelt, in which case the latter Court sustained the constitutionality of the Legal Tender Act.

REVIEW.

The Law of Nations considered as Independent Political Communities—On the Rights and Duties of Nations in Time of Peace. By Travers Twiss, D.C.L., Regius Professor of Civil Law in the University of Oxford, Q.C. Longman & Co., 1861.

The Law of Nations considered as Independent Politica Communities—On the Rights and Duties of Nations in Time of War. By Travers Twiss, D.C.L., &c. Longman & Co. 1863.

There have been few topics of practical importance which have given rise, among philosophers, to such wide and inconsequential speculations as the true boundaries of law, when regarded in its relations to ethics, on one side, and to politics, on the other. Those who are, by their profession, most conversant with municipal jurisprudence, or positive law, know the extreme difficulty of scientific definitions upon the subject. Irrespective of its sources, or of the principles which should govern *legislation*, professional lawyers regard laws merely as commands enforceable by sanctions, and imposing a duty upon those to whom they are addressed. This conception of law implies a superior, who has the right to issue a command, and to enforce obedience to it; and as in every State the sovereign power is such superior, it is only necessary to know what are its commands in order to become acquainted with the laws which are to be observed in the State. The law of nations, however, rests upon a very different footing, and implies very different relations between those from whom they emanate, and those to whom they are addressed. In the world's hierarchy, as it is at present constituted, there is no sovereign whose laws all communities are bound to obey. It is necessary, therefore, for modern international lawyers to seek another theory as the basis for their system, and Dr. Twiss accordingly, in the preface to the first of the above-mentioned volumes, thinks it necessary to insist that, according to the broader view taken by the scholastic jurists who were the immediate predecessors of Grotius, law is but "an ordinance of reason promulgated for the common good." He admits it, however, to be a well founded distinction between a rule of law and a rule of morality, that "whenever the sanction of a rule of conduct is physical, in other words, whenever the sanction is fear of injury to person or property, the rule may be properly classed under the head of law, as distinguished from morality, the sanctions of which are only to be discovered in the human conscience."

In this passage Dr. Twiss can hardly mean to insist that the fear of retaliation, or of provoking a stronger power to war, is such a sanction as would convert what would otherwise be a mere rule of morality into a rule of law. We apprehend that for this purpose it is necessary that the fear should have reference to the command of a superior, enforceable by punishment, whether the superior be an individual or an aggregate of individuals representing the civilized world. In this view international law is substantially conformable to the same conceptions as those which relate to municipal jurisprudence; and the great object of international lawyers should be to show how far it is possible to frame a system which will have the adherence of all or the great majority of civilized States. Grotius was the first notable writer on this branch of jurisprudence; and, no doubt, since his time and since the notion of Universal Empire or Imperial Supremacy has been exploded in Europe, both statesmen and jurists have felt the great necessity for establishing a kind of international arbitrament for the decision of disputes between nations who might otherwise be compelled to seek in war satisfaction for their real or supposed wrongs. Such a feeling, and such a desire, have led the way to the majority of the famous treaties and conventions of the past two centuries; and induced European statesmen to constitute, by means of a balance of power, something like a world-wide judicature. To the same source we also owe the institution of embassies, although, by a curious synchronism, if not, indeed, by a natural connection, standing armies were contemporaneously introduced into modern history. It may lie in the mouth of a cynic to say that the attempt to maintain the balance of power has created, or prepared the way for, as many wars as it has been the means of avoiding; and it might even be argued with some colour of reason, that if there were fewer ambassadors, there would be fewer national quarrels. It cannot be denied, however, that, since the treaty of Utrecht, A.D. 1713, when the balance of power was first distinctly recognised as a rule of international law, Europe has enjoyed unusually long intervals of peace, and the great powers, acting as a council of Christendom, have, in the spirit of their international treaties, adjusted many disputes that otherwise would probably have led to wide-spread hostilities. Although it is to be feared that the principles of the Peace Society are not likely in our day to be carried fully into effect, there is every reason to hope that, as civilization progresses, the voice of Reason, supported by those who are disinterested, will prevail more and more against the violence of passion and of self-interest. This happy state of things, however, must never be expected in the absence of the power which can enforce obedience; but before obedience can be enforced, it is necessary that there should be a law, and the difficulty is, to get anything like the necessary agreement among powerful nations, for the formation of a comprehensive code, either in the shape of treaties or conventions, which will, in express terms, govern the varying cases as they arise from time to time. Writers on international law are, therefore, compelled to resort to some supposed consent of nations, evidenced by custom or implied compact, as a supplement to the conventional or diplomatic law, which finds its expression in treaties and compacts. We put out of the question such writers as Hobbes and Puffendorf, who fancy that international law is identical with some law of nature, inasmuch as the latter, if not wholly

imaginary, it is, at all events, inapplicable for practical purposes. The truth is, that, although there are numerous theories upon the subject, the sources of international law are few and obvious enough. There must, of course, be community of sentiment, or else there will be no agreement, and therefore no rule of law. This "common sense of nations" is indeed the only thing absolutely necessary as the foundation of international law; but this can hardly be inconsistent with the *jus naturale*—with the natural reason which is common to all mankind. Therefore, in one sense, it may be called natural law; and, according as men become more enlightened and civilized, international law will become not only more profitable, but more just and operative. The main difficulty is that which falls to the lot of those jurists who undertake to define the boundaries of the subject, and to frame its rules by way of deduction from what has already been admitted into the international code, modified as occasion may require by altered states of circumstances. This is a work of peculiar embarrassment, beset as it is with all the special impediments which the self-interest or prejudice of particular nations throw in the way of an adjustment which, in itself, is difficult enough.

One of these problems of international law is its relations to international morality. On this point Dr. Twiss has the following observations:—"It is not a valid objection to the existence of juridical relations between nations, that they are not, like the domestic law of a state, defined by the sovereign power, or that they are not enforced by the executive authority of a political superior. If those relations can be accurately defined, howsoever, and can be enforced at all, they are not merely relations of morality, but relations of law. The history of the European Law of Nations shows that the more powerful nations have, as occasion required, used their individual strength to enforce its rules, and that the less powerful nations have combined their forces from time to time, and by their united strength compelled the more powerful states to respect them. Such leagues for the enforcement of the reciprocal rights and obligations of nations have been the means of maintaining a balance of power amongst the European nations, whereby the independence of the weaker states is protected from aggression, and the observance of settled rules of intercourse amongst nations is secured. Wherever a rule of conduct is thus capable of being enforced, it ceases to be a mere rule of morality, binding on the *conscience of men*, and may, in contradistinction be termed, without risk of confusion, a *rule of law*. There are, however, many questions between nations which involve matters of international morality, and the rules of international morality are supplemental to the rules of international law. Law may prevent wrong, but it cannot always secure right, and morality here steps in to the aid of law between nations precisely as it comes to the aid of law between individual human beings. Mr. Chancellor Kent has well observed, 'that the law of nations is a complex system, composed of various ingredients; it consists of general principles of right and justice, equally suitable to the government of individuals in a state of natural equality, and to the relation and conduct of nations; of a collection of usages and customs, the growth of civilisation and commerce; and a code of conventional and positive law. In the absence of these latter regulations, the intercourse and conduct of nations are to be governed by principles fairly to be deduced from the rights and duties of nations and the nature of moral obligations; and we have the authority of lawyers of antiquity, and some of the first masters in the modern school of public law, for placing the moral obligations of nations and of individuals on similar grounds, and for considering individual and national morality as parts of one and the same science."'

The passage which we have here quoted is a good illustration of the kind of questions that receive discussion from international jurists, and of the utility of the study itself. They have to show, not only that the law of nations is in many respects analogous to municipal law, but that it is equally possible as a science. Having once ascertained its true sources and boundaries, they are thenceforward encumbered with fewer embarrassments than the municipal legist, who is obliged, at every step, to attempt the reconcilement of science with peculiar customs and inveterate prejudices, which in themselves have almost the force of law. The rules of international law being based upon Reason and upon sentiments common to the great majority of mankind, and being, moreover, designed for universal application, not only admit of, but demand, a more scientific treatment, and it only requires two or three such writers as Dr. Twiss and Mr. Wheaton in each of the great nations to bring about the establishment of a code which would be virtually obligatory upon all. It is, therefore, with no little pleasure that we notice the volumes before us, which are in themselves a most valuable acquisition to the law of nations, characterised, as they are, throughout by a philosophical elevation of thought, by considerable learning, and by sound judgment. In order to enable our readers to judge for themselves of the author's style and method, we make two or three extracts, which will not only serve this purpose, but will also prove interesting in themselves. Having given us, with the author's approbation, Savigny's definition of Possession—the Jus Possidendi—Dr. Twiss goes on to discuss the topic of possession, as founding a right of property.

"The lawfulness of all possession depends upon what the later Roman jurists call the *modus acquirendi*. The act of detention *per se* in the case of a person detaining a thing constitutes a condition of fact, which has been termed by jurists natural possession. The condition of fact involved in bare detention (*nuda rei prehensio*) is regarded as terminable at any moment; but if a person detains a thing *animo sibi habendi*, and manifests his intention of exercising ownership for himself, such continuing detention gives rise to a condition of law and it has consequently been termed legal possession. *Apiscimur possessionem, animo et facto, neque per se animo aut per se corpore.* The condition of law arises in this manner. There is an obligation of natural law upon all persons to refrain from personal violence, for personal inviolability is a natural right. But the continuing detention of a thing, *animo sibi habendi*, cannot be interrupted or put an end to against the the will of the party so detaining it, without violence to his person. There thus arises an obligation of natural law to refrain from disturbing a party who is in possession of a thing, as the inviolability of the person extends to those acts of disturbance, whereby the person might at the same time be, however indirectly, interfered with. The right of property is thus a corollary to the right of personal inviolability, for the right of property in a thing, or the lawful power of dealing with it at will, may be said to have arisen, when all persons recognise the party in possession of a thing to have a right of excluding them from dealing with it, and that right is *de facto* recognised when all persons admit an obligation on themselves to refrain from disturbing him in his possession of it. Possession accordingly, that is, a continuing detention *animo sibi habendi* as as distinguished from bare detention, gives rise to the right of not being disturbed; and when the possession itself is rightful in its origin, the right which ensues is a perfect right. In respect of this right, certain rules, as to the acquisition and loss of possession, have been established. The first rule is, that a person may take possession of a thing which has no owner, so as to acquire rightful possession of it; and property is in such case acquired simultaneously with possession. *Quod enim nullius est, id ratione naturali occupanti conceditur.* The second rule is, that a person may acquire rightful possession of a thing of which the previous owner has renounced possession, either relatively in his favour by cession, or absolutely to the first comer by abandonment."

In the volume on the *Rights and Duties of Nations in the time of War*, the topics treated are as follows:—The Settle- of International Disputes; War and its Characteristics; the commencement of War, regarded in its effect upon individuals and their property; the Rights of an Individual in the Territory of an Enemy; the Rights of a Belligerent on the High Seas; Blockade; Contraband of War; Capture, and its Incidents; Privateers; and the Rights and Duties of Neutral Powers. All these questions are discussed in detail, with much ability and learning. The following extract relates to a question which will be interesting to every lawyer:—

"A conflict of jurisdiction may arise between a neutral admiralty court and a belligerent prize court, under circumstances of this nature. Property has been sometimes condemned in the prize court of a belligerent power, notwithstanding that it has been lying in a neutral port. In case, however, that such property should have been captured in violation of the neutrality of the State within whose territorial jurisdiction the captured property has been brought, it will be competent for the admiralty court of the neutral state to decree restitution of such property to the owners, who have been dispossessed of it by the wrongful act of the captors. The captors, on the other hand, if they have proceeded *pari passu* in the prize court of their own country, may have obtained a decree of condemnation of the property as good prize of war, in the absence of any suggestion from the agent of the neutral state that its neutrality has been violated. The possible conflict between two such sentences was considered by the Supreme Court of the United States in the case of property, which had

been captured by a belligerent privateer, after it had augmented its crew in a port of the United States during its cruise. It was asserted before the neutral admiralty court that the prize court of the belligerent power had condemned the property in controversy pending the suit before the neutral court. 'Assuming' says Mr. Justice Story, in delivering the opinion of the Supreme Court 'for the purpose of argument, that the condemnation was regularly made and is duly authenticated, we are of opinion that it cannot oust the jurisdiction of this court, after it has once regularly attached itself to the cause. By the seizure and possession of the property under process of the district court, the possession of the captors was divested, and the property was emphatically placed in the custody of the law. It has been since sold by consent of the parties, under an interlocutory decree of the court, and the proceeds are deposited in the registry to abide the final adjudication. Admitting then that property may be condemned whilst lying in a neutral country (a doctrine which has been affirmed by this Court), still it can be so adjudicated only, while the possession of the captor remains; for if it be divested in fact or by operation of the law, that possession is gone, which can alone sustain the jurisdiction. *A fortiori*, where the property is already in the custody of a neutral tribunal, and the title is in litigation there, no other foreign court can by its adjudication rightfully take away its jurisdiction, or forestall and defeat its judgment. It would be an attempt to exercise a sovereign authority over the court having possession of the thing, and to take from the nation the right of vindicating its own justice and neutrality.' Lord Stowell, in administering the prize law of the English Admiralty Court in the case of a British vessel captured by a Dutch privateer, which had been sold under a sentence of condemnation passed in a prize Court at the Hague, whilst the vessel itself was lying in a Norwegian port, was most reluctant to recognise the validity of such a sale, on the ground that 'the *res ipsa*, the *corpus*, was not within the possession of the Dutch Court, and possession founds the jurisdiction,' but he deferred to the practice which had been not only admitted, but applied by British prize courts, and, in violation of what he believed to be the true principle, felt bound by precedent to recognise the title given by the decree of the Dutch Court. But his objection is well worthy of the consideration of belligerent powers, for the decree of condemnation of a belligerent court must of necessity remain a dead letter, if a neutral court should be in possession of the *res*, and should adjudge it to be restored to the owner, on the ground of the capture involving a violation of its neutrality."

We have already devoted much more than our usual space to the present notice, and must content ourselves by adding that the two volumes before us are a highly creditable performance, even for the Regius Professor of Civil Law in the University of Oxford.

SOCIETIES AND INSTITUTIONS.

LAW STUDENTS' DEBATING SOCIETY.

The following is the secretary's report of this society:—

In discharge of the duty cast upon me by the 17th of your rules, I now beg to submit to you a statement in writing of the proceedings of the society during the past quarter, and, in so doing, I would congratulate you on the flourishing state of the society, having regard as well to the number of members actually upon the roll as to the attendance at the meetings. The quarter which has just closed has comprised eight meetings of the society, the first of which, held on the 27th October, was wholly occupied by discussions upon the minutes of the preceding annual meeting, and a motion brought forward by special leave, upon which I may observe, in passing, that, without casting a doubt upon the propriety of the particular questions raised on that occasion, it is very desirable for the sake of those who are only able to participate in the benefits of this society for a short period, that all such discussions should be avoided as much as possible, in order that the meetings may be devoted to the more legitimate objects of the society. The motion debated at the meeting to which I refer was made by myself, and was for the re-appointment of reporters to the society. The president at the annual meeting having ruled that the election of new reporters could not take place at that meeting, the debate upon this motion was ultimately adjourned until this evening, and the subject is now on your paper for further discussion, together with a notice of motion by Mr. Peachy for the entire abolition of the system of reporting, when it is to be hoped that a final decision upon this much vexed question may be come to. At the remaining meetings during the past quarter, four legal and three jurisprudential questions have been discussed. The number of members on the roll of the society is 126, being, I believe, a larger number than has ever existed before, and, of these, ninety are active members of the society, in the habit of frequently attending and taking part in the debates, while of not more than seven or eight can it be said to be doubtful whether they still remain members; twenty-two new members have been elected during the quarter, as against eleven in the corresponding quarter of 1862, and there have been six resignations. The largest attendance at any meeting has been forty-four, and the smallest thirty-four, the average of all the meetings being thirty-nine, as compared with thirty-three during the corresponding quarter of 1862, which number your then secretary reported to be the highest average that had then been attained. The average length of time occupied by the debates on the legal and jurisprudential questions has been two hours and twelve minutes, the average number of speakers eleven; of voters, twenty-one. The smallness of the last of these numbers, as compared with the average attendance at the meetings, induces me to direct your particular attention to the advisability of members making it a practice to give their votes on the questions discussed, and to remind you that the attainment of a habit of forming a deliberate and accurate judgment on doubtful or disputed points of law is a purpose of the society not second in importance to the acquirement of confidence in public speaking. Six of the members have been present at every meeting held during the quarter. At the intermediate examination in Michaelmas Term, one member was honourably mentioned, and at the final examination in the same term, one gentleman, who was lately a member, obtained a prize. OCTAVIUS L. HILLS, Secretary.

Law Institution, January 5, 1864.

LAW STUDENTS' JOURNAL.

PRELIMINARY EXAMINATIONS BEFORE ENTERING INTO ARTICLES OF CLERKSHIP TO ATTORNEYS AND SOLICITORS.

Pursuant to the judges' orders, the Preliminary Examination in General Knowledge will take place on the 10th and 11th of May, 1864, and will comprise—

1. Reading aloud a passage from some English author.
2. Writing from dictation.
3. English grammar.
4. Writing a short English composition.
5. Arithmetic. A competent knowledge of the first four rules, simple and compound.
6. Geography of Europe and of the British Isles.
7. History. Questions on English history
8. Latin. Elementary knowledge of Latin.
9. 1. Latin. 2. Greek, modern or ancient. 3. French. 4. German. 5. Spanish. 6. Italian.

The special examiners have selected the following books, in which candidates will be examined in the subjects numbered 9 at the examinations on the 10th and 11th of May, 1864:—

In Latin.—Cornelius Nepos, Lives of Miltiades, Themistocles, Aristides, Pausinias, Cimon, Lysander; or Virgil Georgics, books i. and ii.

In Greek.—Xenophon, Anabasis, book i.

In modern Greek.—Βικελαίου, περὶ Ἀδικημάτων καὶ Ποινῶν μεταφρασμένον ἀπὸ τὴν Ἰταλικὴν Γλῶσσαν, 17—30, both inclusive; *or*, Βυντοτῆ Ἱστορία τῆς Ἀμερικῆς, βιβλίον ν'.

In French.—J. B. Poquelin de Molière, Les Femmes Savantes; or, Guillaume Guizot, Alfred le Grand ou l'Angleterre sous les Anglo-Saxons.

In German.—Schiller, Die Piccolomini, Acts 1 and 2; or Gotthold Ephraim Lessing, Fabeln, books i. and iii.

In Spanish.—Cervantes' Don Quixote, capit. xv.—xxx. both inclusive; or, Leandro Fernandez de Moratin, El Si de las Ninas.

In Italian.—Manzoni's Promessi Sposi, cap. xii.—xxii. both inclusive; or, Torquato Tasso's La Gerusalemme, 6, 7, 8, and 9 cantos.

With reference to the subjects numbered 9, each candidate will be examined in one language only, according to his selection. Candidates will have the choice of either of the abovementioned works.

The examinations will be held at the Incorporated Law Society's Hall, Chancery-lane, London, and at some of the following towns:—Birmingham, Brighton, Bristol, Cambridge,

Cardiff, Carlisle, Carmarthen, Chester, Durham, Exeter, Lancaster, Leeds, Lincoln, Liverpool, Maidstone, Manchester, Newcastle-on-Tyne, Oxford, Plymouth, Salisbury, Shrewsbury, Swansea, Worcester, York.

Candidates are required by the judges' orders to give one calendar month's notice to the Incorporated Law Society, before the day appointed for the examination, of the language in which they propose to be examined, the place at which they wish to be examined, and their age and place of education. All notices should be addressed to the Secretary of the Incorporated Law Society, Chancery-lane, W.C.

LAW LECTURES AT THE INCORPORATED LAW SOCIETY.

Mr. Wm. Murray, on Common Law and Mercantile Law, Monday, Jan. 11.

Mr. Montague Hughes Cookson, on Equity, Friday, Jan. 15.

COURT PAPERS.

Court of Probate AND Court for Divorce and Matrimonial Causes.

Sittings in and after Hilary Term, 1864.

Court of Probate.

Causes without juries.—Wednesday, January 13th, Thursday 14th, Friday, 15th.

Court for Divorce and Matrimonial Causes.

Causes without juries.—Saturday, January 16th, Friday, 22nd, Saturday, 23rd, Wednesday, 27th, Thursday, 28th, Friday, 29th, Saturday, 30th, Wednesday, February 3rd, Thursday, 4th, Friday, 5th, Saturday, 6th.

Full Court for Divorce and Matrimonial Causes.

Wednesday, January 20th, Thursday, 21st.

Trials by jury:—Wednesday, February 10th, Thursday, 11th, Friday, 12th, Saturday, 13th, and each succeeding Wednesday, Thursday, Friday, and Saturday, until Wednesday, March 23rd, inclusive. Probate causes will be taken first.

The judge will sit in chambers to hear summonses at eleven o'clock, and in court to hear motions at twelve o'clock, on Tuesday, January 12, and on each succeeding Tuesday, until Tuesday, March 22nd, inclusive.

All papers for motions must be left with the clerk of the papers before two o'clock on the Thursday before the motion is to be heard.

PUBLIC COMPANIES.

PROJECTED COMPANIES.

British and Foreign Contract Company (Limited).

Capital £3,000,000, in 30,000 shares of £100 each.

Solicitors—Messrs. Wilkinson & Leather, 44, Lincoln's-inn-fields; Messrs. Manning & Walker, Great George-street, Westminster.

This company is formed as a necessary and useful auxiliary to the various financial and credit corporations, for the purpose of contracting for, and aiding in, the constructions of railways and other public works at home and abroad.

British Nation Fire Insurance Company (Limited).

Capital £1,000,000, in 50,000 shares of £20 each.

Solicitors—Messrs. Eyre & Lawson, 1, John-street, Bedford-row.

This company has been established for affording increased facilities for effecting fire policies.

Neustadt Charcoal Iron Works Company (Limited).

Capital £230,000, in 11,500 shares of £20 each.

Solicitors—Messrs. Hargrave, Fowler, & Blunt, 3, Victoria-street, Westminster; Henry Gartside, Esq., Ashton-under-Lyne.

This company is established for the purchase and working the celebrated iron works, situated at Neustadt, on the Hanover and Bremen Railway.

The Grand International Alliance Hotels Company (Limited).

Capital £300,000, in 12,000 shares of £25 each.

This company has been formed for the purpose of establishing a through system of hotel accommodation between Holland, Belgium, France, and England, by means of hotels belonging to this company in Holland and Belgium, acting *en correspondence* and in alliance with first-class hotels in France and England already in existence, and belonging to other companies.

Western Fire Insurance Company (Limited).

Capital £1,000,000, in 100,000 shares of £10 each.

Solicitors—Harrison Blair, Esq., 40, Brown-street, Manchester; G. H. Drew, Esq., 14, Great Queen-street, Westminster.

This company is established in connection with the Western, Manchester, and London Life Assurance Society, founded in 1842.

An official list of petitions for private bills deposited at the House of Commons on the 23rd ult. has recently been issued. The number of petitions for next session is 504, being a great increase on former years.

The statute under the provisions of which the inquiry into the state of mind of the murderer Townley, the respite of his sentence, and his removal to a lunatic asylum took place, is the 3 & 4 Vict. c. 54, entitled "An Act for making Further Provision for the Confinement and Maintenance of Insane Prisoners."

The provisional order made last sessions, dividing the whole of the county of Surrey into highway districts, for the purpose of the Highway Act, came under discussion at the meeting of the Surrey magistrates on Tuesday. After a desultory conversation, in which Sir William Joliffe, Major Penrhyn, Lord Lovaine, Mr. Roberts, and other magistrates took part, the provisional order was confirmed.

BIRTHS, MARRIAGES, AND DEATHS.

BIRTH.

DAUNEY—On Dec 31, at 33, Upper Berkeley-st, Portman-sq, the wife of Alexander Dauney, Barrister-at-Law, Esq., of a daughter.

MARRIAGES.

HOGG—DARVALL—On Jan 1, at Barrow-on-Soar, Leicestershire, Alfred Graham Hogg, Esq., of Canton, to Eleanor Ann, second surviving daughter of the late Joseph Darvall, Esq., Solicitor, of Reading.

DEATHS.

CLARKSON—On Jan 2, at Folkestone, Sophia, sister of the late Wm Clarkson, Esq., of the Inner Temple, Barrister-at-Law.

HARVEY—On Dec 31, at Princes-park, Liverpool, aged 31, Thomas Henry Harvey, Esq., Solicitor.

UNCLAIMED STOCK IN THE BANK OF ENGLAND.

The amount of Stock hereinafter standing in the following Names will be transferred to the Parties claiming the same, unless other Claimants appear within Three Months:—

Cureton, Charlotte Agnes, Hampton-court-palace, Widow. £500 New Three per Cents.—Claimed by said C. A. Cureton.

LONDON GAZETTES.

Professional Partnerships Dissolved.

Friday, Jan. 1, 1864.

Clarke, Wm, & David Simpson Morice, Coleman-st, London, Attorney and Solicitors (Clarke & Morice). By effluxion of time. Dec 31.

Tuesday, Jan 5, 1864.

Dimmock, Edw Moss, Wallis Nash, & Allan Field, Suffolk-lane, London, Attorneys, Solicitors, and Conveyancers. By mutual consent, so far as regards E. M. Dimmock. Dec 31.

Dowding, Edwyn, & Hy Holland Burne, Bath, Attorneys and Solicitors. By mutual consent. Dec 31.

Evans, John Llewellyn, Thos Newbon, Fredk Heritage, & Joseph Newbon, Wardrobe-pl, Doctor's-commons, Attorneys and Solicitors, (Newbon, Evans, & Co). By mutual consent, so far as relates to T. Newbon. Dec 31.

Smith, John Wm Pye, & Benj Wightman, Sheffield, Attorneys and Solicitors (Smith & Wightman). By mutual consent. Dec 31.

Winding-up of Joint Stock Companies.

Tuesday, Jan 5, 1864.

Unlimited in Chancery.

Universal Club and Permanent Exposition Company (Limited).—Petition for winding-up, presented Dec 22, will be heard before the Master of the Rolls on Jan 16. Terrell & Chamberlain, Basinghall-st, Solicitors for Petitioner.

Western Benefit Building Society.—Petition for winding-up, presented Dec 29, will be heard before the Master of the Rolls on Jan 16. Surr & Gribbin, Abchurch-lane, Agents for Gibson & Moore, Plymouth, Solicitors for Petitioner.

Pneumatic Ship Raising and Universal Salvage Company (Limited).—Petition for winding-up, presented Dec 14, will be heard before the Master of the Rolls on Jan 16. Pritchard, Coleman-st, Solicitor for petitioner.

Creditors under 22 & 23 Vict. cap. 35.

Last Day of Claim.

FRIDAY, Jan. 1, 1864.

Barton, Ewd, Lacock, Wilts. Feb 4. Goldney & Co, Chippenham.
Bell, Rbt, Newcastle-upon-Tyne, Grocer. March 31. Brown, Newcastle-upon-Tyne.
Burkill, John, Welford, Northampton, Gent. March 24. Haxby, Leicester.
Colson, Rev John Morton, Fordington, Dorset, Clerk. Feb 1. Andrews & Cockeram, Dorchester.
Cruttenden, Rev Wm Cruttenden, Alderley, Chester, Clerk. Jan 31. Earle & Co, Manch.
Harby, Ewd, Nottingham, Grocer. Feb 15. Hogg, Nottingham.
Lawrence, Benj, Bradford-on-Avon, March 1. Rawlings, Melksham.
Locock, Thos, Weston-super-Mare, Victualler. Feb 1. Davies & Son, Weston-super-Mare.
Randall, Mary, Theale, nr Reading, Spinster. March 1. Sharp, Greshamhouse.
Shepherd, Ann, St Bees, Cumberland, Spinster. Feb 1. Fox, Whitehaven.
Shepherd, Hy, Faversham, Esq. Feb 15. Tassell, Faversham.
Warton, Chas, Kemsdale, Kent, Esq. March 1. Tassell, Faversham.
Whitley, Jas. Almondbury, York, Coal Merchant. Feb 1. Barker & Sons, Huddersfield.

TUESDAY, Jan. 5, 1864.

Ash, Robt, Trinity-sq, Blackman-st, Gent. March 1. Matthews & Co, Leadenhall-st.
Beale, John, South Hay-house, Bath, Gent. March 1. Stone & Co, Bath.
Dowbiggin, Richd, Whittington, Lancaster, Joiner. Feb 14. Sharp, Lancaster.
Jones, Lewis Reynold, West-sq, Southwark, Gent. Jan 31. Chas Ogle Rogers, 6½, Austin-friars, London. Executor.
Knollis, Rev Francis Minden, Bournemouth, D.D. Feb 15. Western, Gt James-st.
Levick, Christopher Kenney, West Ham, Essex, Surgeon. Feb 1. Jewitt, Coleman-st.
Royston, John, Bishopwearmouth, Woollen Draper. March 1. Ritson, Sunderland.
Shippen, Peter Saml, Niton, Isle of Wight, Esq. March 5. Norton & Co, Walbrook.
Spencer, Geo Hinton, Pilgrim-st, Ludgate-hill, Furrier. March 1. Church & Sons, Bedford-row.
Taylor, David, Higher Broughton, Lancaster, Printer. Feb 25. Brookes, Manch.
Wilson, Elizabeth, Bristol, Widow. March 4. King & Plummer, Bristol.

Creditors under Estates in Chancery.

Last Day of Proof.

FRIDAY, Jan. 1, 1864.

Iremonger, Wm, Wherwell Priory, Southampton, Esq. Feb 5. Iremonger v Iremonger, V. C. Stuart.
Stewart, John, Burwood-pl, Hyde-park, Esq. March 1. Painter v Gardner, V. C. Kindersley.
Tuck, David, Bournemouth, Builder. Jan 11. Chubb v Lane, V. C. Wood.

TUESDAY, Jan. 5, 1864.

Anderson, Jas Alex, Fenchurch-st, Ship Broker. Feb 1. King v Wyllie, V. C. Kindersley.
Schofield, Robt, Rochdale, Flannel Manufacturer. Feb 10. Peters v Schofield, V. C. Stuart.
Ward, Sir Hy Geo, Madras. Nov 2. Curry v Ward, V. C. Stuart.

Assignments for Benefit of Creditors.

FRIDAY, Jan. 1, 1864.

Nelson, John, Richmond, York, Innkeeper. Dec 17. Robinson, Richmond.
Smith, Wm Nicholas, West Cowes, Draper. Dec 3. Lawrance & Co, Old Jewry-chambers.

TUESDAY, Jan. 5, 1864.

Green, Alf, & Wm Hy Glover, Stourbridge, Vice Makers. Dec 8. Price, Stourbridge.

Deeds registered pursuant to Bankruptcy Act, 1861.

FRIDAY, Jan 1, 1864.

Allsworth, Wm, Manch, Baker. Dec 3. Comp. Reg Dec 31.
Ansell, Robt, Fakenham, Norfolk, Auctioneer. Dec 5. Asst. Reg Jan 1.
Bard, Alf, Waterloo Ville, Southampton, Butcher. Dec 3. Conv. Reg Dec 31.
Bray, Geo Stephen Rollings, Louth, Watchmaker. Dec 2. Conv. Reg Dec 29.
Bryan, Wm, North Shields, Hair Dresser. Dec 2. Conv. Reg Dec 30.
Burt, Lawrence, Silver-st, London, Fancy Manufacturer. Dec 22. Conv. Reg Dec 31.
Chapman, Joseph, Lakenheath, Suffolk, Grocer. Dec 3. Conv. Reg Dec 30.
Cottom, Wm, Great Bridge, Westbromwich, Ironfounder. Dec 10. Asst. Reg Dec 10.
Edridge, Wm Jas, Lloyd-sq, Middx. Nov 11. Comp. Reg Dec 28.
Gill, Joseph, Birm, Jeweller. Nov 26. Conv. Reg Jan 1.
Gibby, Wm, Waterston, Pembroke, Butcher. Dec 24. Conv. Reg Dec 30.
Greenfield, Humphrey Jas, High Offley, Stafford, Coal Dealer. Dec 26. Conv. Reg Jan 1.
Groves, Edwin, Southsea, Brewer. Dec 2. Asst. Reg Dec 30.
Hemingway, Isaac, Ossett, York, Cloth Manufacturer. Dec 5. Asst. Reg Dec 29.
Iveson, Frederic, Gracechurch-st, London, Timber Merchant. Dec 11. Comp. Reg Dec 31.
Jeslico, Jane, Brighton, Spinster, Laundress. Dec 2. Conv. Reg Dec 30.
Leeson, Edwd, Wrawby, Lincoln, Butcher. Dec 5. Asst. Reg Dec 30.
Lowe, Jas, Strand, Middx, Medical Botanist. Dec 24. Comp. Reg Dec 30.
Marshall, Joseph, Rusholme, Manch, Tailor. Dec 10. Asst. Reg Dec 30.
McMillan, Saml, Bolton, Tailor. Dec 28. Asst. Reg Jan 1.
Milestone, Geo, York, Builder. Dec 4. Conv. Reg Dec 29.
Northway, Saml, Torquay, Wine Merchant. Dec 3. Asst. Reg Dec 30.
Palmer, Wm, Birm, Pie Maker. Dec 16. Asst. Reg Dec 30.
Richards, Robt, Wellington, Salop, Draper. Dec 5. Asst. Reg Dec 31.
Sabbarton, Joshua, Edward-st, Islington, Cabinet Maker. Dec 5. Asst. Reg Jan 1.
Smith, Wm Nicholas, West Cowes, Draper. Dec 3. Asst. Reg Dec 30.
Taylor, John, Basingstoke, Cabinet Maker. Dec 7. Asst. Reg Dec 30.
Till, Joseph, & Wm Goodman, Birm, Shoe Manufacturers. Nov 28. Asst. Reg Dec 26.

TUESDAY, Jan. 5, 1864.

Bradbury, Stephen, Weston-super-Mare, Pawnbroker. Dec 5. Conv. Reg Jan 1.
Collins, Eli, Cross-st, Islington, Cheesemonger. Dec 18. Comp. Reg Jan 4.
Cutler, Wm, Luton, Draper. Dec 9. Asst. Reg Jan 5.
Ford, Alf, North End, Fulham, Manager of India Rubber Works. Dec 16. Arr. Reg Dec 31.
Gallic, Hector, Jas Ryder, & Thos Pagett, Sutton, nr St Helen's, Lancaster, Glass Bottle Manufacturers. Dec 9. Asst. Reg Jan 1.
Green, Alf, & Wm Hy Glover, Stourbridge, Vice Makers. Dec 8. Conv. Reg Jan 5.
Hacon, Richd Dennis, Bedford, Surgeon. Dec 24. Comp. Reg Jan 4.
Hanson, Jas, & Robt Hanson, Heywood, Lancaster, Blacksmiths. Dec 12. Conv. Reg Jan 2.
Hawkins, Wm Hy, Lpool, Broker. Dec 11. Conv. Reg Jan 4.
Howells, John, Openshaw, Lancaster, Agent. Dec 7. Comp. Reg Jan 1.
Hutchinson, Jane, Amble, Northumberland, Widow. Dec 11. Conv. Reg Jan 1.
Jackson, Jos, Brighton, Hatter. Dec 23. Comp. Reg Jan 5.
Lock, John Geo, Woodbridge-st, Clerkenwell, Cabinet Maker. Dec 31. Asst. Reg Jan 4.
Parry, Rbt, Tynewydd, Denbigh, Farmer. Dec 4. Asst. Reg Jan 1.
Patrick, Rbt Wm, Long Sutton, Lincoln, Grocer. Dec 11. Asst. Reg Jan 2.
Penton, Chas, Hammersmith, Leather Seller. Dec 21. Comp. Reg Jan 5.
Robson, Ewd, Edgware-rd, Bookseller. Dec 10. Asst. Reg Jan 4.
Shaw, Peter, Broadley, & John Beaumont, Kirkheaton, York, Cloth Manufacturers. Dec 7. Conv. Reg Jan 2.
Smallridge, Saml, Tawstock, Devon, Yeoman. Dec 21. Conv. Reg Jan 2.
Smeeton, Jas, Leamington Priors, Grocer. Dec 18. Asst. Reg Jan 2.
Smith, Frdk Leopold, & Joseph Cowan, Lpool, Corn Merchants. Dec 30. Conv. Reg Jan 1.
Smith, Mary Ann, Doncaster, Milliner. Dec 8. Asst. Reg Jan 4.
Spittle, David, Birm, Wholesale Dealer. Dec 24. Asst. Reg Jan 1.
Stopford, Adam, & Elisha Stopford, Denton, Lancaster, Merchants. Dec 5. Asst. Reg Jan 1.
Symonds, Jos Hargrave, Dalston-lane, Dalston, Attorney-at-Law. Dec 7. Comp. Reg Jan 4.
Turtle, Wm, jun, & John Turtle, Sheffield, Builders. Dec 7. Asst. Reg Jan 2.
Tulk, Jas Stuart, Clapton, Gent. Dec 8. Arrt. Reg Jan 1.
Vale, Geo Phillip, Stratford, Wheelwright. Dec 18. Comp. Reg Jan 5.
Viney, Geo, Stoke Damarel, Grocer, Dec 24. Asst. Reg Jan 4.
Walker, Chas Wm, Lpool, Grocer. Dec 24. Conv. Reg Jan 1.
Whittard, Joseph, Bristol, Draper. Dec 15. Conv. Reg Jan 5.

Bankrupts.

FRIDAY, Jan. 1, 1864.

To Surrender in London.

Aitken, John, Hitchin, Draper. Adj Dec 29. Jan 11 at 1. Eldred & Andrew, Great James-st.
Archbold, John Frdk, King's-bench-walk, Barrister-at-Law. Pet Dec 24. Jan 19 at 12. Lewis & Lewis, Ely-pl.
Bickerton, Geo Burgess, Virginia-row, Hackney, Grocer. Pet Dec 29. Jan 11 at 1. Spiller, South-pl, Finsbury.
Briant, Wm, Modbury-ter, Kentish-new-town, Horsekeeper. Pet Dec 29. Jan 16 at 1. Swan, Great Knight Rider-street.
Devonshire, John Kempe, Euston-rd, Clerk. Pet Dec 30. Jan 19 at 12. Philp, Bucklersbury.
Emes, Hy, Derwent-ter, Poplar, Cheesemonger. Pet Dec 30. Jan 19 at 11. Lund, Castle-st.
Evans, Thos. sen, Bermondsey, Greengrocer. Pet Dec 28. Jan 19 at 11. Chipperfield, Trinity-st.
Hollis, Richd. & Wm Hollis, Witney, Oxford, Machine Makers. Pet Dec 29. Jan 19 at 11. Harrison & Lewis, Old Jewry.
Lock, John, Caterham, Surrey, Timber Merchant. Pet Dec 28. Jan 19 at 11. Ody, Trinity-street.
Meyer, Edw, Pleasant-pl, Kingsland-rd, Cheesemonger. Pet Dec 28. Jan 16 at 1. Vann, Providence-row
Webb, Wm, St George-st, Peckham, Tailor's Foreman. Pet Dec 30. Jan 16 at 1. Burrell, Lincoln's-inn-fields.

To Surrender in the Country.

Attwood, Wm, Exeter, Glass & China Dealer. Pet Dec 28. Exeter, Jan 13 at 11. Fryer, Exeter.
Austen, Geo, Brenchley, Kent, Wood Dealer. Pet Dec 28. Tonbridge Wells, Jan 19 at 12. Morgan, Maidstone.
Boothman, John, Burnley, out of business. Pet Dec 29. Burnley, Jan 14 at 3. Southern, Burnley.
Bouck, Edw Geo, Leamington, Warwick, in no business. Pet Dec 29. Birm, Jan 11 at 12. Wright, Birm.
Carruthers, John, Carlisle, Builder. Pet Dec 24. Carlisle, Jan 12 at 12. Wannop, Carlisle.
Chowen, Richd, North Petherwyn, Devon, Builder. Pet Dec 28. Exeter, Jan 13 at 11. Fryer, Exeter.
Cullwick, Geo, Bilston, Baker. Pet. Wolverhampton, Jan 14 at 12. Stratton, Wolverhampton.
Davies, John Humphrey, Ebenezer, Carnarvon, Builder. Pet Dec 29. Lpool, Jan 15 at 12. Blackhurst, Lpool.
Dodgson, Edw, Wakefield, Beerseller. Pet Dec 29. Wakefield, Jan 16 at 11. Barratt, Wakefield.